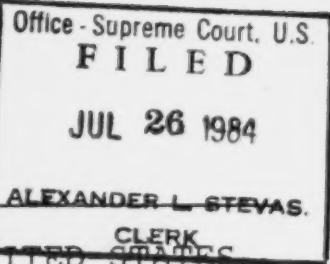


84-149

NO.



IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

SHELBY RIGGS, ET AL.,
PETITIONERS

V.

COMMONWEALTH OF KENTUCKY, ET AL.,
RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DEAN HILL RIVKIN
6608 Crystal Lake Drive
Knoxville, TN 37919
(615) 974-2331

OLIVER BARBER, JR.
635 W. Main Street
Louisville, KY 40202
(502) 585-2100

DON DUFF
212 Washington Street
P. O. Box 457
Frankfort, KY 40602
(502) 223-7656

July, 1984

Counsel for Petitioners

52 PP



QUESTION PRESENTED

Whether a State, consistent with the due process clause of the Fourteenth Amendment, may terminate by lay-off the employment of state merit system employees without adequate pretermination protections and in violation of prescribed state procedures.

PARTIES TO THE PROCEEDINGS

Other parties, in addition to those named in the caption, are included in the footnotes below.

* Additional plaintiffs: Sarah Hammonds, Morrison Cook, Jack Greene, Marvin Cole, H. Jane Jaggers, Edward Spencer, Lloyd Ryles, Sr., Lois Smith, Kyle Ball, Davis Pearsman, Thomas Jasper, Ralph Murphy, Marjorie Ralston, Paul Camplin, Rita McMahon, Billy Furnish, Ruth Mayeux, Ann Peel, Catherine Hayden, Davis Jackson, Sr., G.L. Jackson, Earl Howard, Phyllis Eggen, Mary Peter, James Fuller, Jr., Glenn Howell, F. Gayle Havens, John Thomas, Patricia Jerry, Martha Brown, James Huffines, Sr., W. Kenneth Keown, Dorothy Hoskins, William Carver, Jr., Gary Wooldridge, Jack Walker, Charles Davis, Kelly Daniels, James Brown,

Larry Shoemaker, Albert Sperath, Roberta Gabbard, Karan Sullivan, George Puckett, and Mary Alexander

** Additional defendants: John Y. Brown, Governor, Commonwealth of Kentucky; Dee Maynard, Commissioner, Kentucky Department of Personnel and Secretary, Kentucky Personnel Board; Phillip Taliaferro, Chairman, Kentucky Personnel Board; Libby Walthall, Vice-Chairman, Kentucky Personnel Board; James S. Way, Member, Kentucky Personnel Board; John W. McNeill, Member, Kentucky Personnel Board; W. Grady Stumbo, Secretary, Kentucky Department for Human Resources; Bruce Lunsford, Secretary, Kentucky Commerce Cabinet; Frank R. Metts, Secretary, Kentucky Department of Transportation; Jackie Swigart, Secretary, Kentucky Department for Natural Resources and Environmental Protection; John R. Groves, Jr., Commissioner, Kentucky Department of Housing, Buildings and Construction; Robert H. Allphin, Commissioner, Kentucky Department of Revenue; George L. Atkins, Secretary, Kentucky Department of Finance; Don Mills, Secretary, Kentucky Education and Humanities Cabinet; Lois Mateus, Commissioner, Kentucky Department of the Arts; James A. Nelson, State Librarian; Raymond Barber, Superintendent of Public Instruction; Roger Peterman, Executive Director, Kentucky Development Finance Authority; Neil J. Welch, Secretary, Kentucky Department of Justice; George W. Wilson, Secretary, Kentucky Department of Corrections; Daniel D. Briscoe, Commissioner, Kentucky Department of Insurance, Richard H. Lewis, Commissioner, Kentucky Department of Alcoholic Beverage Control; Joseph R. Bell, Executive Vice President, Kentucky Fair and Exposition Center; Billy G. Wellman, Adjutant General, Kentucky Department of Military Affairs; Andrew "Skipper" Martin, Commissioner, Kentucky Department of Community and Regional Development; George Fischer, Secretary, Kentucky Personnel and Management Cabinet;

Mike Robinson, Director of Administrative Control; Matthew J. Amato, Jr., Director, Division of Personnel Management; Rita Young, Acting Director, Office of Personnel Management; Ernest P. Fowler, Acting Director, Division of Management Services; Vert Taylor, Director of Personnel; Robert E. Blanz, Director, Division of Water Quality; James E. Stewart, Director, Division of Management Services; and Willard Stanley, Commissioner, Kentucky Department of Mines and Minerals.



TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	2
Statutes and Regulations	2
Statement	5
Reasons for Granting the Petition . .	12
Conclusion	20
Appendix A	1a
Appendix B	12a
Appendix C	27a

TABLE OF AUTHORITIES

Cases:

<u>Board of Education v. Roth</u> , 408	
<u>U.S. 564 (1972)</u>	11, 13
<u>Board of Education v.</u>	
<u>Vail</u> , 104 S.Ct. 2144 (1984),	
<u>aff'g 706 F.2d 1435 (7th Cir.</u>	
<u>1983)</u>	14
<u>Cleveland Board of Education</u>	
<u>v. Loudermill</u> , 721 F.2d 550	
<u>(6th Cir. 1983), cert. granted,</u>	
<u>104 S.Ct. 2384 (1984)</u>	18
<u>Davis v. Scherer</u> , 52 U.S.L.W.	
<u>4956 (U.S. June 28, 1984)</u>	19
<u>Hudson v. Palmer</u> , 52 U.S.L.W.	
<u>5052 (U.S. July 3, 1984)</u>	16
<u>Logan v. Zimmerman Brush Co.</u> . .	14
<u>Parma Board of Education</u>	
<u>v. Donnelly</u> , 721 F.2d 550	
<u>(6th Cir. 1983), cert. granted,</u>	
<u>104 S.Ct. 2384 (1984)</u>	18



Cases -- Continued	Pages
<u>Parrott v. Taylor</u> , 451 U.S. 527	
(1981)	17
<u>Patsy v. Board of Regents</u> , 457	
U.S. 496 (1982)	10
<u>Vitek v. Jones</u> , 445 U.S. 480	
(1980)	14

Constitutional Provisions,
Statutes and Regulations:

U.S. Constit., Amend. 14	1-20
42 U.S.C. § 1983	2, 11
Ky. Rev. Stat. § 18.120	6
Ky. Rev. Stat. § 18.210	3, 8, 15
Ky. Rev. Stat. § 18.217	3, 8
101 Ky. Admin. Reg.	4, 6



IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

NO.

SHELBY RIGGS, ET AL.,
PETITIONERS

V.

COMMONWEALTH OF KENTUCKY, ET AL.,
RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

The petitioners, forty-seven present and former Kentucky state employees, respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on April 10, 1984.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 734 F.2d 262 and appears in

the Appendix hereto (App. A, infra, 1a-11a). The opinion of the United States District Court for the Western District of Kentucky appears as Appendix B, infra, 12a-26a.

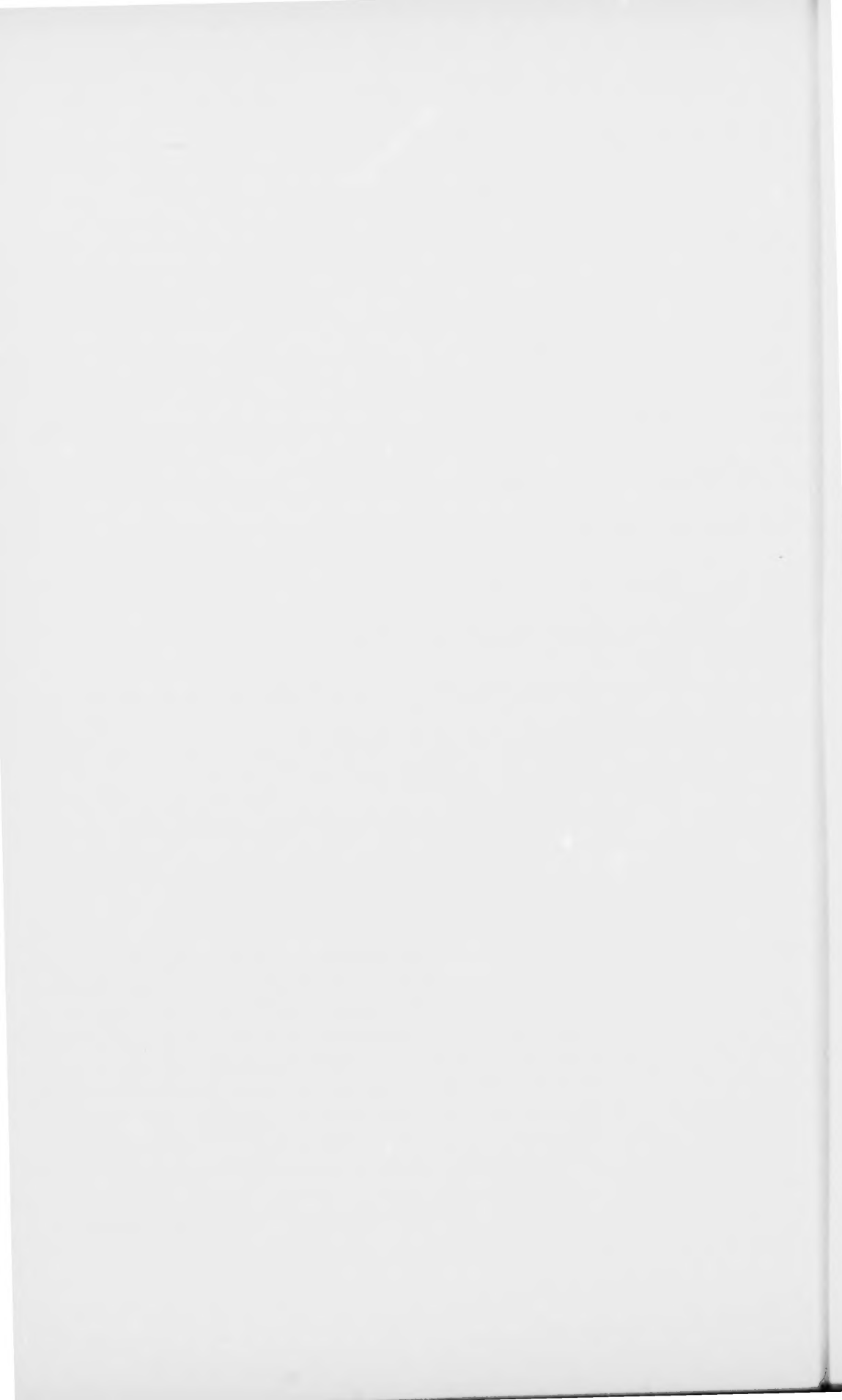
JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was entered on April 10, 1984. A timely petition for rehearing was denied on May 1, 1984 (App. C, infra, 27a), and this Petition for Certiorari was filed within ninety days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTES AND REGULATIONS INVOLVED

1. 42 U.S.C. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit



in equity, or any other proper proceeding for redress.

2. Ky. Rev. Stat. § 18.210 provides in pertinent part:

18.210. Rules for classified service. -- The commissioner of personnel shall prepare and submit to the personnel board proposed rules for the classified service . . . The rules shall provide

* * * *

(14) For lay-offs by reasons of lack of funds or work, or abolishment of a position, or material change in duties or organization, and for reinstatement of employees so laid off, giving consideration in both lay-offs and reemployment to qualifications, performance records, conduct and seniority in service;

3. Ky. Rev. Stat. § 18.217 provides:

18.217. Reemployment of employees with classified service status --

(1) Any career employee who has been laid off or dismissed, other than for cause, and, in the case of an unclassified management employee, resignation other than resignation in lieu of dismissal for cause, shall be placed on reemployment lists for those classes of positions for which he is qualified and passes the appropriate selection method. Such career employee shall notify the department of personnel in writing that he desires reemployment in order to be eligible for placement on reemployment lists.

(2) If more than one (1) career employee requests to be placed on



the reemployment list for any job classification, the department of personnel shall list the names of such career employees in the order of the seniority.

(3) No vacancy may be filled from a competitive register until all career employees on the reemployment list for that class of position have been given full consideration for reemployment. An appointing authority may refuse to reemploy a qualified employee on the reemployment list only for cause. The commissioner of personnel and the employee shall be furnished with a written statement of the specific reasons for the refusal within ten (10) days following the appointing authority's refusal. The employee may appeal the appointing authority's action in accordance with KRS 18.270 to 18.272.

4. 101 Ky. Admin. Reg. 1:120 provides in pertinent part:

Section 1. General Provisions. Except as otherwise provided in these rules, the tenure of an employee with status shall be during good behavior and the satisfactory performance of his duties.

Section 2. Layoffs. (1) An appointing authority may layoff an employee in the classified service whenever he deems it necessary by reason of shortage of funds or work, abolishment of a position, or other material change in duties or organization. An employee with status may appeal his lay-off in accordance with 101 KAR 1:130. The employee shall



be notified of the effective date at least fourteen (14) calendar days prior to such effective date and shall be given written notice of the reasons for the layoff and of his right to appeal. The appointing authority shall conduct a personal interview with each laid-off employee to explain the re-employment rights available to that employee under the merit system regulations, unless circumstances prevent such an interview; such circumstances must be detailed in writing to the Commissioner of Personnel.

(2) Seniority, performance, appraisals, conduct, qualifications and type of appointment shall be considered in determining the order of layoffs in a manner prescribed or approved by the commissioner. No status employee is to be separated by layoff while there are provisional, temporary, emergency, or probationary employees serving in the agency in the same class in the same locality.

(3) The appointing authority and the department shall attempt to place the employee in another position for which the employee is qualified.

STATEMENT

Kentucky, like most states, has enacted an elaborate merit or civil service system designed to promote efficiency in state government and to protect state employees from the arbitrary actions of state political

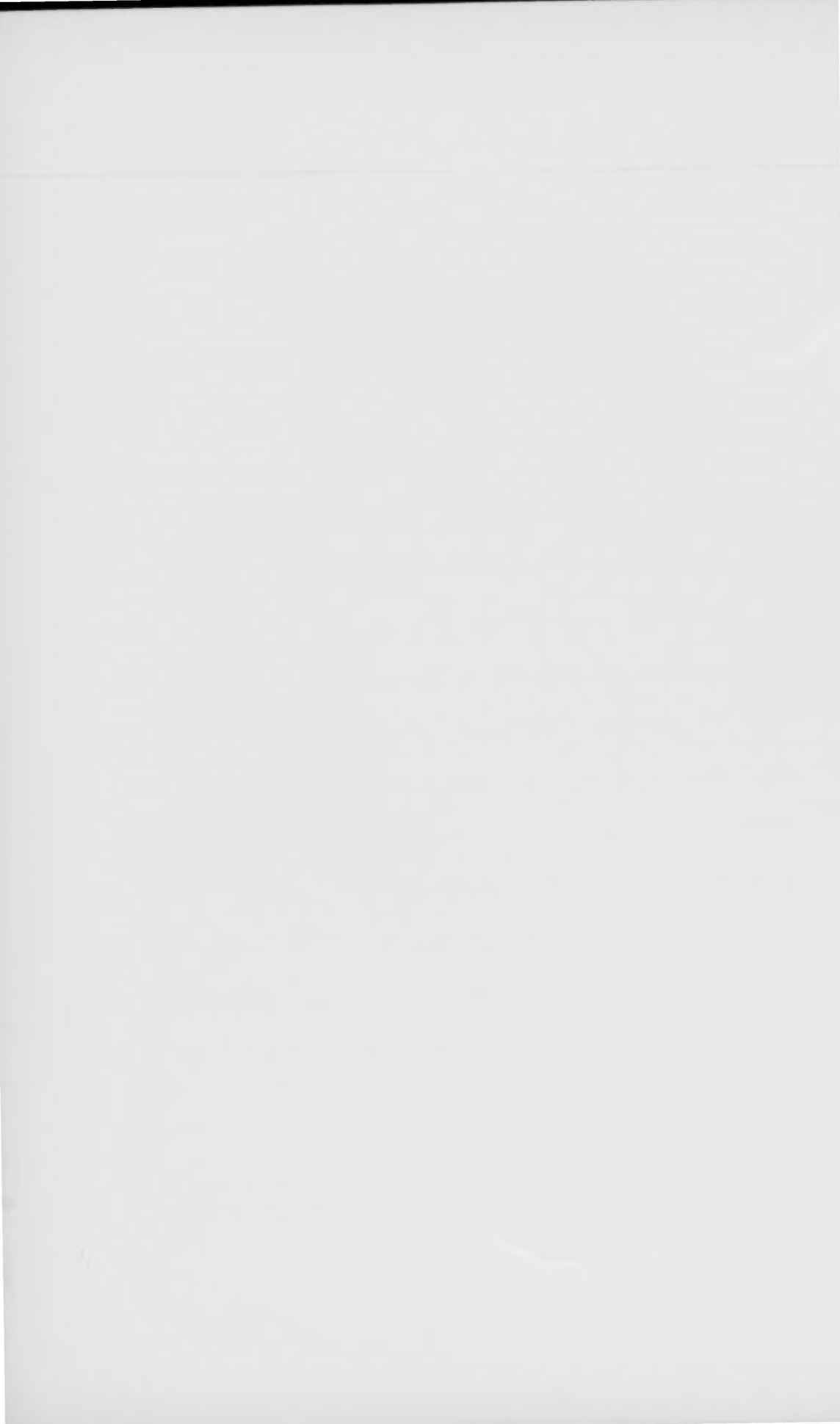


officials. See Ky. Rev. Stat. (hereinafter KRS) § 18.120 et seq. The Kentucky merit scheme, which is at the heart of this case, embodies a complex of rules and regulations covering a wide variety of typical personnel issues. See KRS §§ 18.110 - 18.360 and 101 Ky. Admin. Reg. (hereinafter KAR) §§ 1:010 - 1:200. The Kentucky merit scheme creates a classified service composed of employees who have gained status (or tenure) under this system. "'Status' means the acquisition of tenure with all rights and privileges appertaining thereunto after satisfactory completion of the probationary period by an employe [sic] in the classified service." KRS § 18.110(17). All the petitioners in this case were at one time status employees working throughout the agencies and departments of Kentucky state government. All lost this hard-earned status between December 11, 1979, and October 19, 1981.



During this time, the Governor of Kentucky, John Y. Brown, acting pursuant to the authority given him in KRS chapter 12 to reorganize state government, oversaw the implementation of 254 so-called layoff plans, involving approximately thirty departments. These plans called for the termination, pursuant to layoff, of some 1,800 status employees. This lawsuit was commenced on September 1, 1981, on behalf of 42 named plaintiffs seeking to represent the class of 1,800 state employees adversely affected by the layoffs.¹ The 36 defendants included the Governor, and the top officials responsible for personnel matters in Kentucky state government. The petitioners' complaint alleged that, in formulating and implementing the 254 layoff plans, the respondents effectively circumvented the established merit system and procedures and

1. Five additional plaintiffs were permitted to intervene in the District Court.



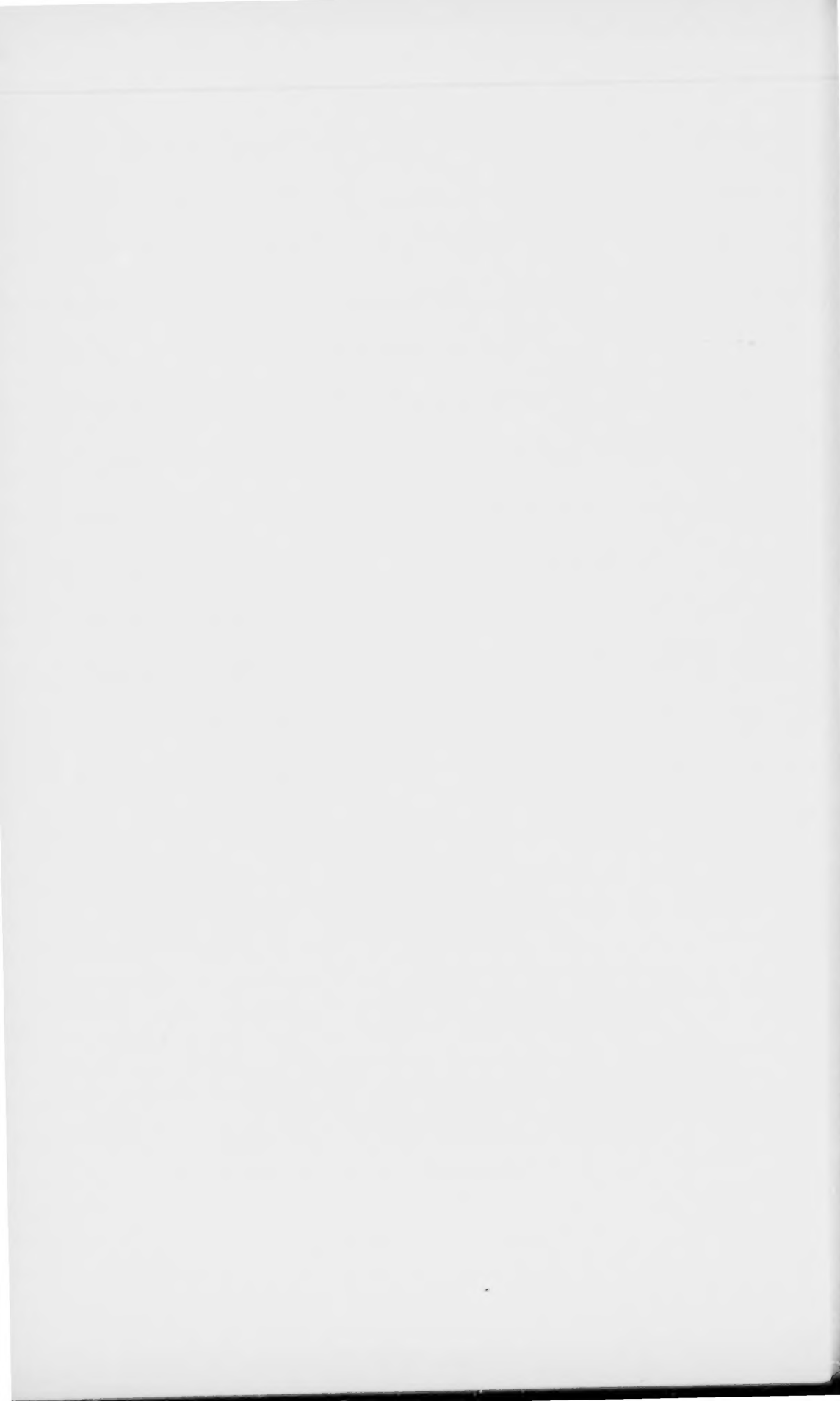
deprived the petitioners of property interests in their employment without due process of law.

Specifically, the complaint alleged that, although the layoff plans were adequate on their face, as applied they deprived the petitioners of a variety of protections granted to status employees under Kentucky law. For example, the plaintiffs asserted that, contrary to KRS § 18.210(14), the layoff plans failed to consider the qualifications, performance records, conduct, and seniority of the 1800 affected employees. It also alleged that, contrary to the requirements of KRS § 18.217 and 101 KAR 1:120, the respondents failed properly to fill existing job vacancies from among the merit employees adversely affected by the layoff plans.

For example, at no time prior to termination were the petitioners offered another position within the department or agency from which he or she was laid off nor in any other branch of state government. The laid

off employees were not allowed to exercise their seniority in order to "bump" other employees from positions for which laid off employees were qualified. These employees also were not evaluated or otherwise informed that they were being terminated or laid off consistent with a plan that considered their seniority, qualifications, conduct, or performance. Many long-standing employees simply received a one-page letter informing them that, effective in a few days, they were to be laid off. This letter also gave the general reason for the lay off and set out certain appeal rights. The complaint sought injunctive relief, primarily reinstatement, back pay, and damages.²

2 The complaint also claimed that the layoff plans had a disparate impact on employees over forty years of age. This claim, which is still before the District Court, was not part of the appeal to the Court of Appeals and is not treated in this Petition.



In response to the complaint, the respondents filed a motion to dismiss for lack of jurisdiction and for summary judgment. Attached to the motion were numerous affidavits and documents allegedly showing that the layoffs were implemented consistent with state law. Because no discovery was permitted by the trial court, the petitioners responded with affidavits by the affected employees disputing the respondents' contentions that, in formulating and implementing the layoff plans, state law and regulations were observed. These affidavits also set forth the circumstances surrounding each employee's adverse job action.

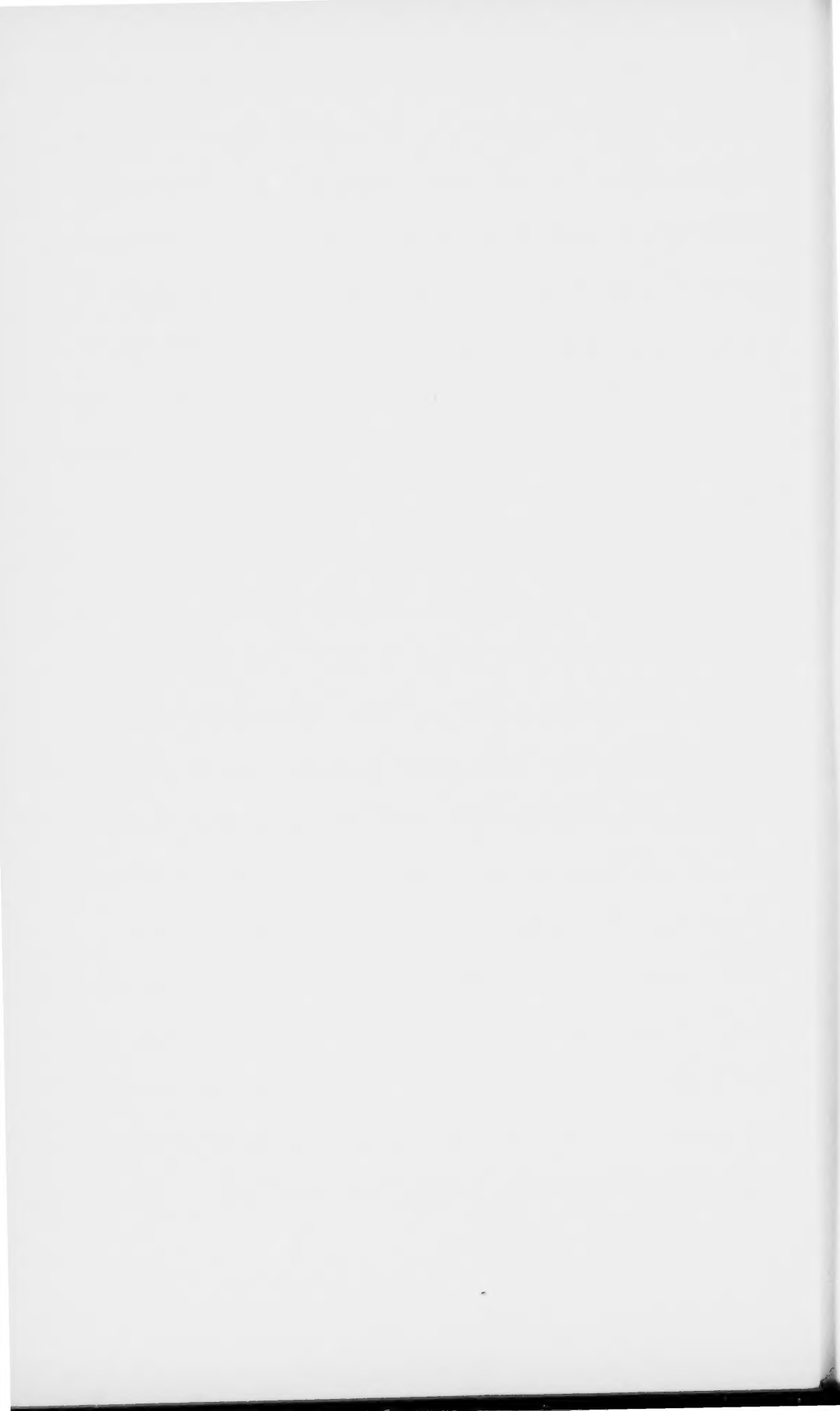
On January 28, 1983, the District Court granted the respondents' motion.³ Drawing a distinction between a layoff and a discharge

3. The District Court had delayed ruling on the motion pending the decision in Patsy v. Board of Regents, 457 U.S. 496 (1982).



for cause, the Court found that "[a] Kentucky employee's claimed entitlement to continued employment is no more than a unilateral expectation and does not rise to the level of a constitutionally protected property right. Board of Regents v. Roth, supra." It thus found that the petitioners had failed to establish a constitutional deprivation cognizable under § 1983.

The Court of Appeals affirmed the decision of the District Court. After reviewing the outlines of the layoff plans and the petitioners' challenges to the formulation and implementation of these plans, the Court held that the petitioners did not possess a protected property or liberty interest within the meaning of Board of Regents v. Roth, 408 U.S. 564 (1972). Noting that, in Kentucky, employees may be laid off without a showing of cause, it found that: "It is the cause element which confers upon the property right the imprimatur of constitutionality. Although



plaintiffs may have had an expectation of continued employment it was a unilateral one and does not rise to the level of a constitutionally protected right."

REASONS FOR GRANTING THE PETITION

1. This Case Raises an Important Issue of Potential Significance to All Government Employees Concerning the Scope of Property Interests Secured by the Due Process Clause of the Fourteenth Amendment

In recent years, states faced with budgetary crises have looked to governmental reorganization as a source of savings. In this process, the governmental employer's zeal to realize rapid efficiencies often conflicts with the prescribed rights of public employees to a form of job security. This case represents the intersection of this mounting conflict.

The fundamental issue raised by this case is the scope of protected property interests possessed by public employees and secured by the due process clause of the Fourteenth Amendment. Here, the Commonwealth of Kentucky,



through its responsible officials, is alleged to have engaged in a systematic pattern and practice of depriving state employees of their merit system jobs without complying with state statutory and administrative provisions. In essence, these procedures are part and parcel of the employment contract the State entered into with these individuals. By breaching these provisions of the employment contract, the state deprived these employees of a protected property interest without adequate due process.

This case has its origin in this Court's opinion in Board of Regents v. Roth, 408 U.S. 564 (1972), where the modern definition of a property interest was forged:

To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. It is the purpose of the ancient institution of property to protect those claims upon which people rely in

their daily lives, reliance that must not be arbitrarily undermined. Id. at 577.

In Vitek v. Jones, 445 U.S. 480, 490-91 (1980), and Logan v. Zimmerman Brush Co., 455 U.S. 422, 432 (1982), the Court made clear that a state may not deprive a person of a protected liberty or property interest simply by specifying "its own procedures that it may deem adequate for determining the preconditions to adverse official action." Logan v. Zimmerman Brush Co., 455 U.S. at 432, quoting Vitek v. Jones, 445 U.S. at 491.

Last term, in Board of Education v. Vail, 104 S.Ct. 2144 (1984), aff'g 706 F.2d 1435 (7th Cir. 1983), the Court, by an equally divided vote, affirmed a Seventh Circuit decision holding that, under Roth and its companion Perry v. Sindermann, 408 U.S. 593 (1972), a public employee possessed a property interest in a two-year promise of employment that could not be terminated without adequate due process protections. In finding that the



employee had a legitimate expectation of continued employment, the Seventh Circuit pertinently observed: "When the government acts as employer, the application of the Due Process Clause protects the individual from arbitrary and capricious conduct and legitimizes governmental action when exercised through proper channels." 706 F.2d at 1438.

In many ways, the present case is even stronger than the Roth-Logan-Vail line of precedent. For here, the Kentucky employees who were laid off had a legitimate expectation that they would continue in their civil service jobs unless the State, in laying them off, took into account their qualifications, performance records, conduct, and seniority in service as prescribed by KRS § 18.210(14) and applicable regulations. By failing to abide by this statutory mandate, which is an integral part of the bundle of conditions that compose the petitioners' property interest, the State effectively

breached its contract with these employees. This breach constitutes a violation of the due process clause.

In the Courts below, the state took the position that, whatever violations of state law might have occurred, the petitioners had available a channel of review through the State Personnel Board, whose members are respondents in this lawsuit. This position, however, ignores the systematic nature of the due process violation alleged by the respondents. Had the state failed to comply with state lay-off rules in random, individual cases, the existence of potential post-termination remedies might support the respondents' position. Here, though, the due process violations were authorized and carried out across-the-board pursuant to official policy and practice. In this situation, the availability of state remedies does not control the due process question. See Hudson v. Palmer, 52 U.S.L.W.

5052, 5056 (U.S. July 3, 1984); Parrott v. Taylor, 451 U.S. 527, 541 (1981).

In sum, the present case raises a due process issue of major importance to all public employees. The issue is controlled by this Court's decisions in Roth, Vitek, and Logan. This Petition should be granted to correct the Sixth Circuit's misapplication of these far-reaching precedents.

2. This Case Involves A Due Process Issue Scheduled to be Decided This Term in Cleveland Board of Education v. Loudermill, 721 F.2d 550 (6th Cir. 1983), cert. granted, 104 S.Ct. 2384 (1984).

Once it is determined that the petitioners possess a constitutionally protected property interest in their employment, the adequacy of the predeprivation procedures used by Kentucky in effecting the layoffs in this case becomes a central issue. At the core of this case is the question whether Kentucky was required to accord the petitioners adequate procedural protections prior to laying them off. Such procedures would



have afforded the petitioners in this case an opportunity to determine whether their qualifications, performance records, conduct, and seniority in service were in fact considered prior to their lay-offs. By regulation, the State was required to notify each employee fourteen days prior to the effective date of the layoff of the reasons for the layoff and of the employee's right to appeal. A personal interview must also be conducted. 101 KAR 1:120 § 2(1). In their complaint, the petitioners claimed that this process was not uniformly followed and, in any event, was inadequate to determine whether the State complied with its obligations to status employees in effecting the layoffs. The petitioners were not afforded a "reasonable" opportunity to be heard or to challenge their layoffs.

In Cleveland Board of Education v. Loudermill, 721 F.2d 550 (6th Cir. 1983), cert. granted, 104 S.Ct. 2384 (1984), and Parma



Board of Education v. Donnelly, 721 F.2d 550 (6th Cir. 1983), cert. granted, 104 S.Ct. 2384 (1984), this Court will consider the extent of constitutionally-mandated due process procedures necessary to protect a government employee's property interest in his or her employment prior to its termination. This issue, whose determination flows from a long line of recent Supreme Court cases (see the discussion of these cases in Davis v. Scherer, 52 U.S.L.W. 4956, 4961 (U.S. June 28, 1984) (Brennan, J., dissenting)), presents itself squarely in the present case. Accordingly, this Court's decision in Loudermill and Donnelly will have a direct bearing on the decision of the Court of Appeals in this case. At a minimum, the Court should remand this case to the Court of Appeals for reconsideration in light of its forth-coming decisions in Loudermill and Donnelly, if the results in those cases conflict with the decision by the Court of Appeals here.



CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Sixth Court.

Respectfully submitted,

DEAN HILL RIVKIN
6608 Crystal Lake Drive
Knoxville, TN 37919

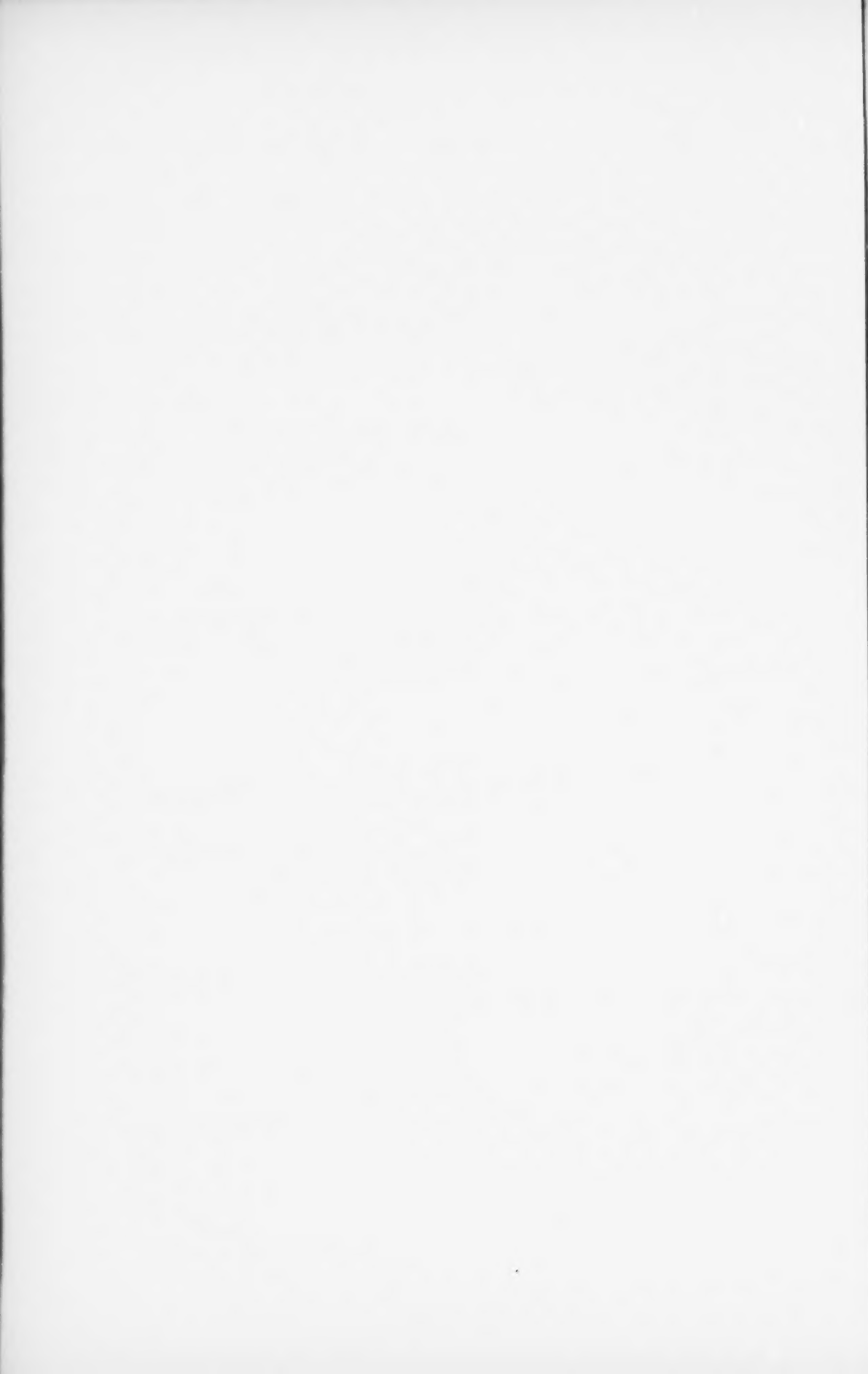
OLIVER BARBER, JR.
635 W. Main Street
Louisville, KY 40202
(502) 585-2100

DON DUFF
212 Washington Street
P. O. Box 457
Frankfort, KY 40602
(502) 223-7656

Counsel for Petitioners

BY: 1-2-76

July, 1984



APPENDIX A

83-5137

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SHELBY RIGGS, <u>et al.</u>)
)
PLAINTIFFS-APPELLANTS,)
)
COMMONWEALTH OF KENTUCKY,)
<u>et al.</u>)
)
DEFENDANTS-APPELLEES)

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
WESTERN DISTRICT OF KENTUCKY

[Decided and Filed April 10, 1984]

BEFORE: KEITH and KRUPANSKY, Circuit
Judges, and PHILLIPS, Senior
Circuit Judge

PER CURIAM. Plaintiffs, forty-two laid
off merit service employees of the Common-
wealth of Kentucky, filed suit under 42
U.S.C. § 1983 alleging constitutional viola-
tions arising from their discharge from em-
ployment. Named defendants are the Common-
wealth of Kentucky, the Governor and thirty-



five officers of the Commonwealth both in their official and individual capacities.

The defendants filed motions to dismiss for lack of jurisdiction and motions for summary judgment. On March 19, 1982, the district court filed a memorandum and order which remanded all motions until a decision was reached in a case then pending before the Supreme Court.¹ On January 28, 1983, the district court dismissed with prejudice all but one of plaintiffs' claims.² Plaintiffs filed their notice of appeal from this dismissal. For the following reasons we affirm the decision of the district court.

¹ Patsy v. Board of Regents, 457 U.S. 496 (1982) addressed the issue of whether a party must exhaust state remedies before seeking federal relief. The high court determined that exhaustion was not required, thus leaving the district court to reach the merits in the instant case.

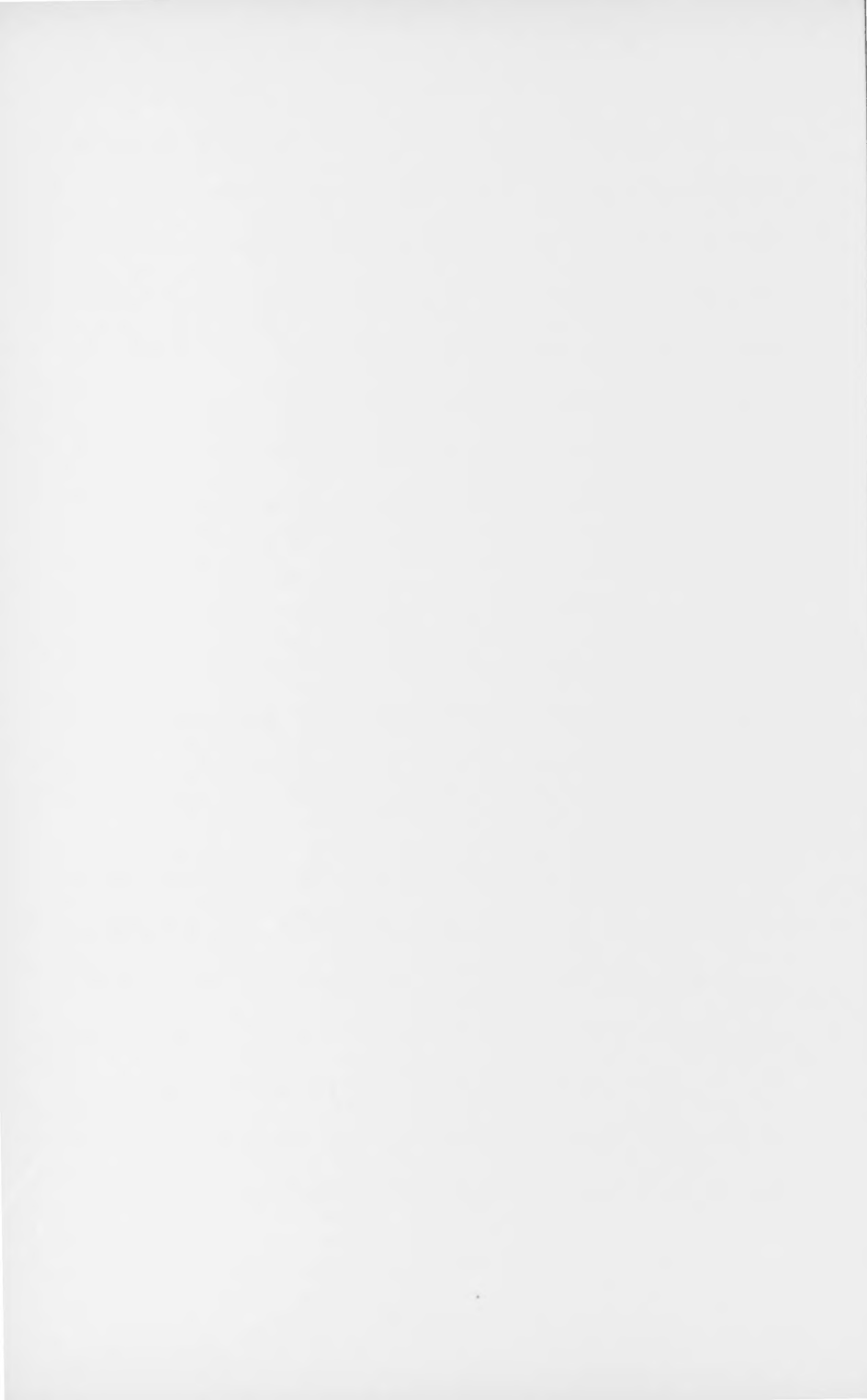
² The one claim not dismissed charged that the lay-off plan had a disparate impact on employees over forty years of age. This claim is not before the Court on appeal.

In September of 1979, when John Y. Brown assumed office as the Governor of Kentucky, he and his department heads undertook an analysis of state government in an effort to reduce expenditures. The reduction in expenditures was required to meet Kentucky's constitutional mandate for a balanced budget. It was necessary to impose substantial budgetary cutbacks in order to meet this mandate. Therefore, Governor Brown directed all department heads to review their operations with the aim of reducing the number of active personnel. This action by the Governor was taken pursuant to Chapter 12 of the Kentucky Revised Statutes (KRS) which gives the Governor the authority to establish, abolish or alter the organization of any agency or statutory department in order to promote economy, efficiency and improve administration.



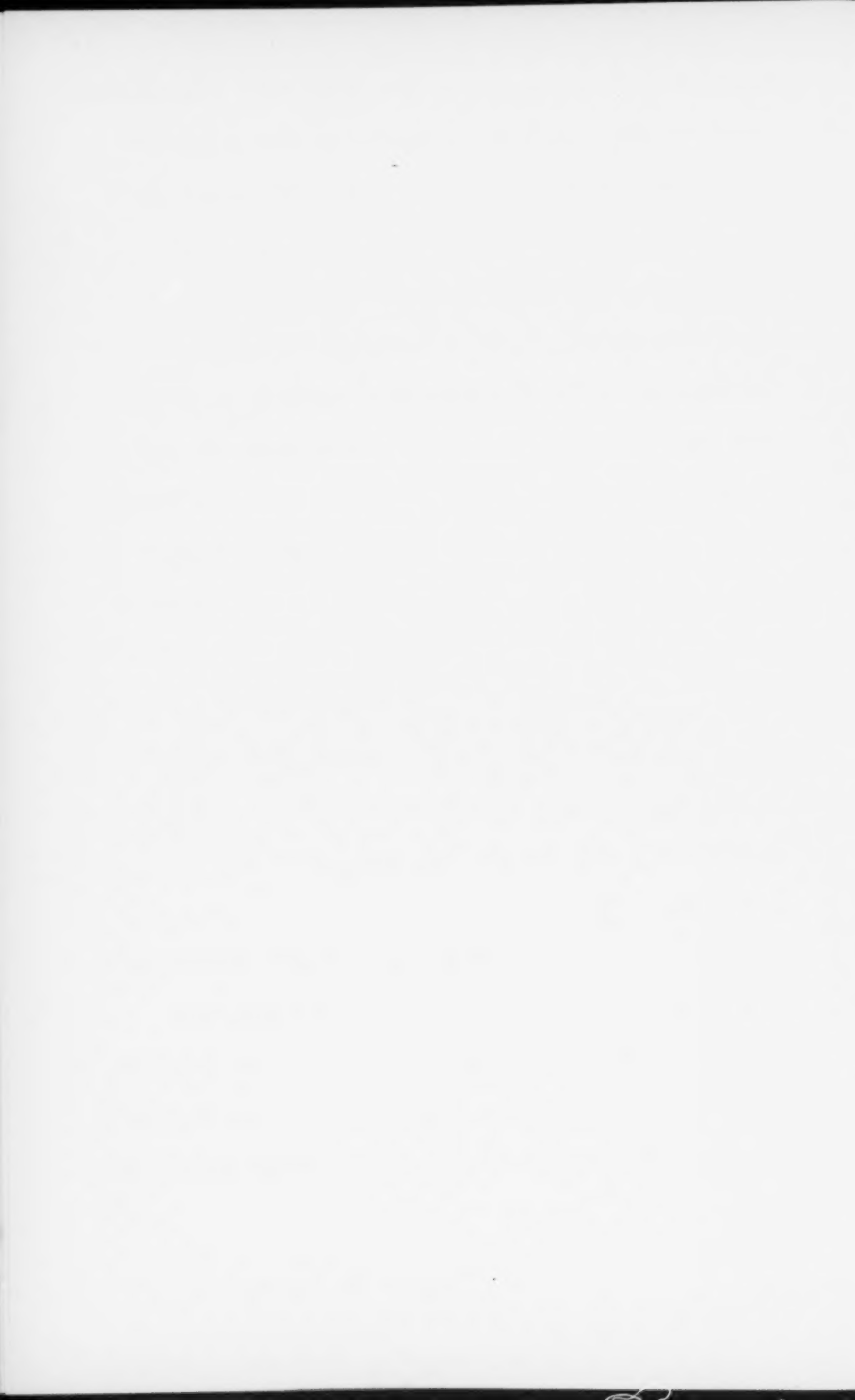
Beginning in December 1979 and continuing through October 1981, the various department and agency heads of state government developed and put into effect some 254 lay-off plans affecting approximately 1,800 state merit system employees. Each of the named plaintiffs was scheduled for lay-off from state government service pursuant to one or more of these layoff plans. As a result of these plans, each of the named plaintiffs asserts they were laid off or terminated from state employment; forced to retire or resign from government service; demoted or otherwise adversely affected in his or her employment.

Defendants allege that the various lay-off plans were developed pursuant to specific procedures found in the statutes of Kentucky and the regulations developed under these laws. KRS 18.210 requires that the Commissioner of Personnel establish rules and regulations for the hiring and dismissal of employees.



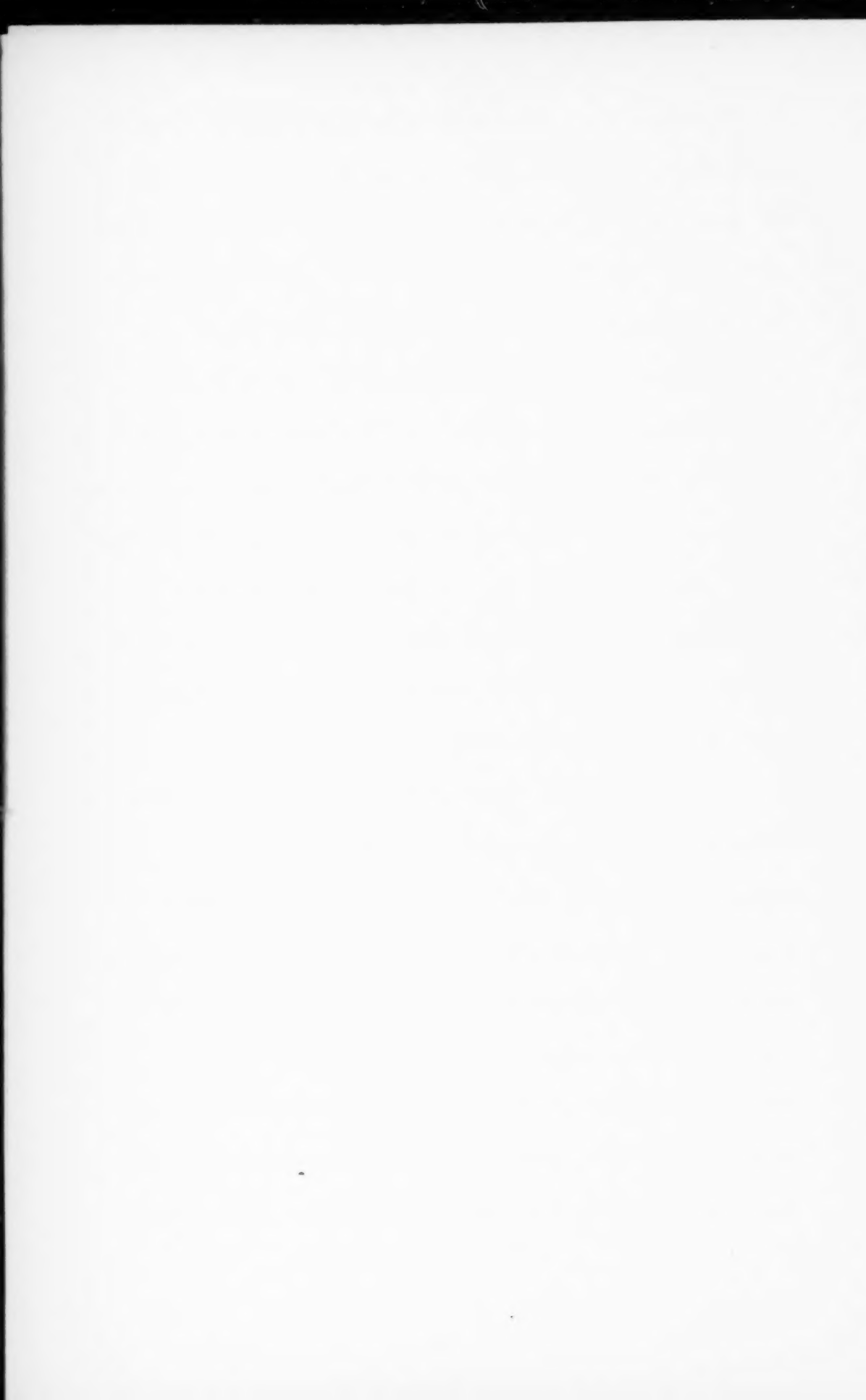
Section 101 et seq. of the Kentucky Administrative Regulations authorized the preparation and implementation of layoff plans by all state departments. Each layoff plan developed and implemented by the respective departments of state government was allegedly different. The departments varied in size and function. Plans were developed at different time periods over the course of twenty months from December 1979 through October 1981, and cutbacks in the respective departments varied because of budgetary considerations. Nevertheless, each of the plans was consistent in that it was to be put into effect only upon the condition that it complied with KRS 18.210 et seq. and 101 KAR 1:010 et seq.

Following the adoption of the numerous plans now objected to and their approval by the Department of Personnel, each department was required by the statutory provisions to provide notice to the individual employees



involved. These rights also provided that each employee be given a brief explanation of the reason for the layoff and an exit interview. Reemployment rights were available to each laid off employee for one year and the rights had to be requested in writing by an employee. These rights included the ability to block the State Employment Register so that no new employee could be hired if the laid off employee could fill the vacancy. The employee also had the statutory right to appeal first to the state personnel board and then to the courts.

Plaintiff's complaint alleges that the defendants formulated and implemented layoff plans in which they failed to consider the seniority, service records, performance appraisals, conduct and qualifications of the employees to be laid off in violation of the Kentucky statutes and regulations. The plaintiffs also allege that the defendants failed to consider the laid-



off employees on the reemployment register. The plaintiffs contend that the defendants' improper formulation and implementation of the layoff plans violated the plaintiffs' due process and equal protection rights afforded them pursuant to Section 1983 and the fourteenth amendment to the United States Constitution.

The defendants made a motion to dismiss for lack of subject matter jurisdiction, and the district court granted their motion. We are in agreement with the district court's decision.

The Eleventh Amendment to the United States Constitution provides:

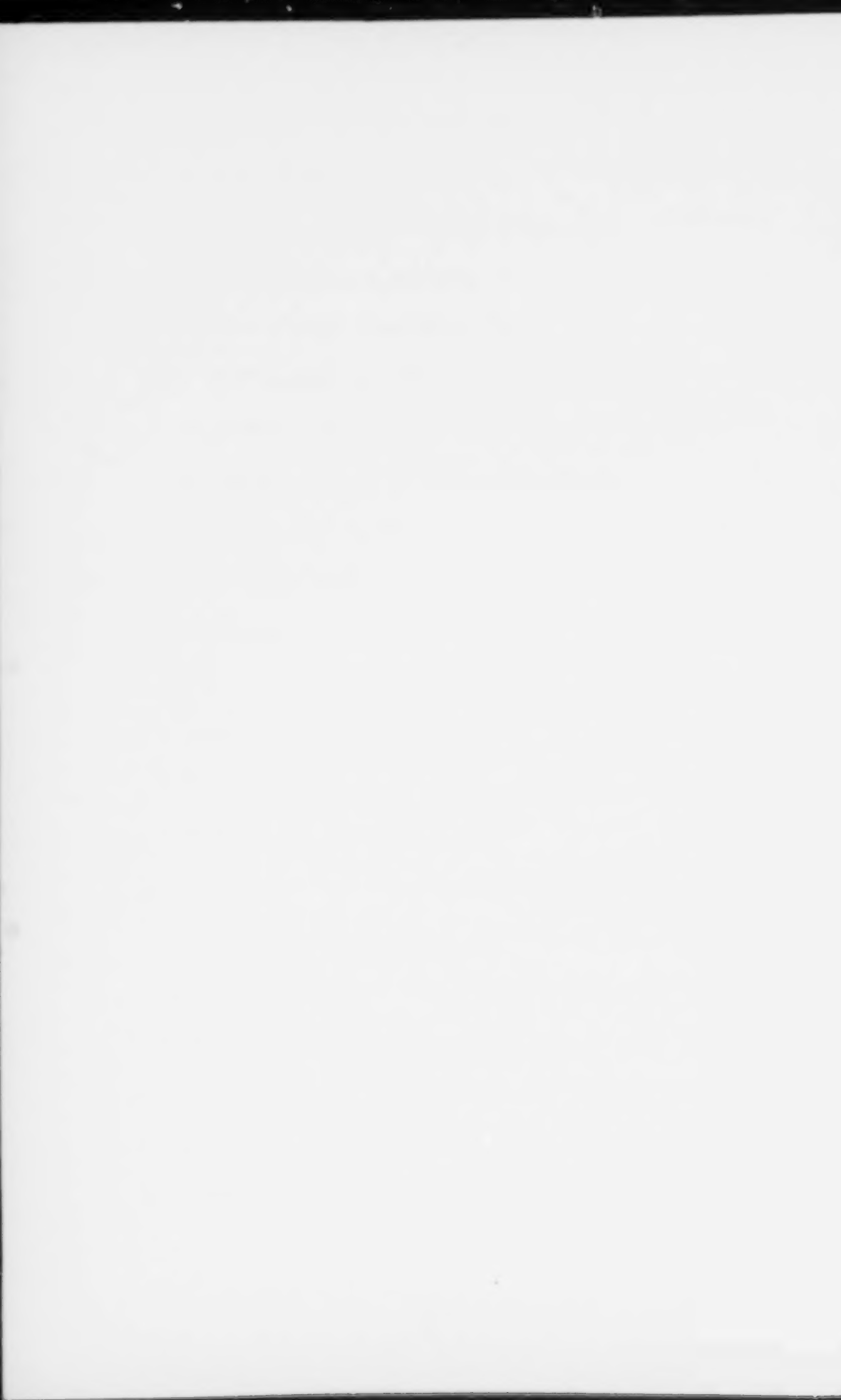
The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens or subjects of any foreign state.

In Hans v. Louisiana, 134 U.S. 1 (1889) the Supreme Court held that a state cannot



be sued in a United States court by one of its own citizens unless the state gives its consent. See also Edelman v. Jordan, 415 U.S. 65 (1974). In Quern v. Jordan, 440 U.S. 332 (1979) the Supreme Court reaffirmed the proposition set forth in Hans and its progeny, but added a further prohibition: the state could not be sued in a federal court by one of its citizens who brought a cause of action based on Section 1983. Thus, the state of Kentucky is immune from suit, and the district court was correct to conclude it had no jurisdiction over this matter.

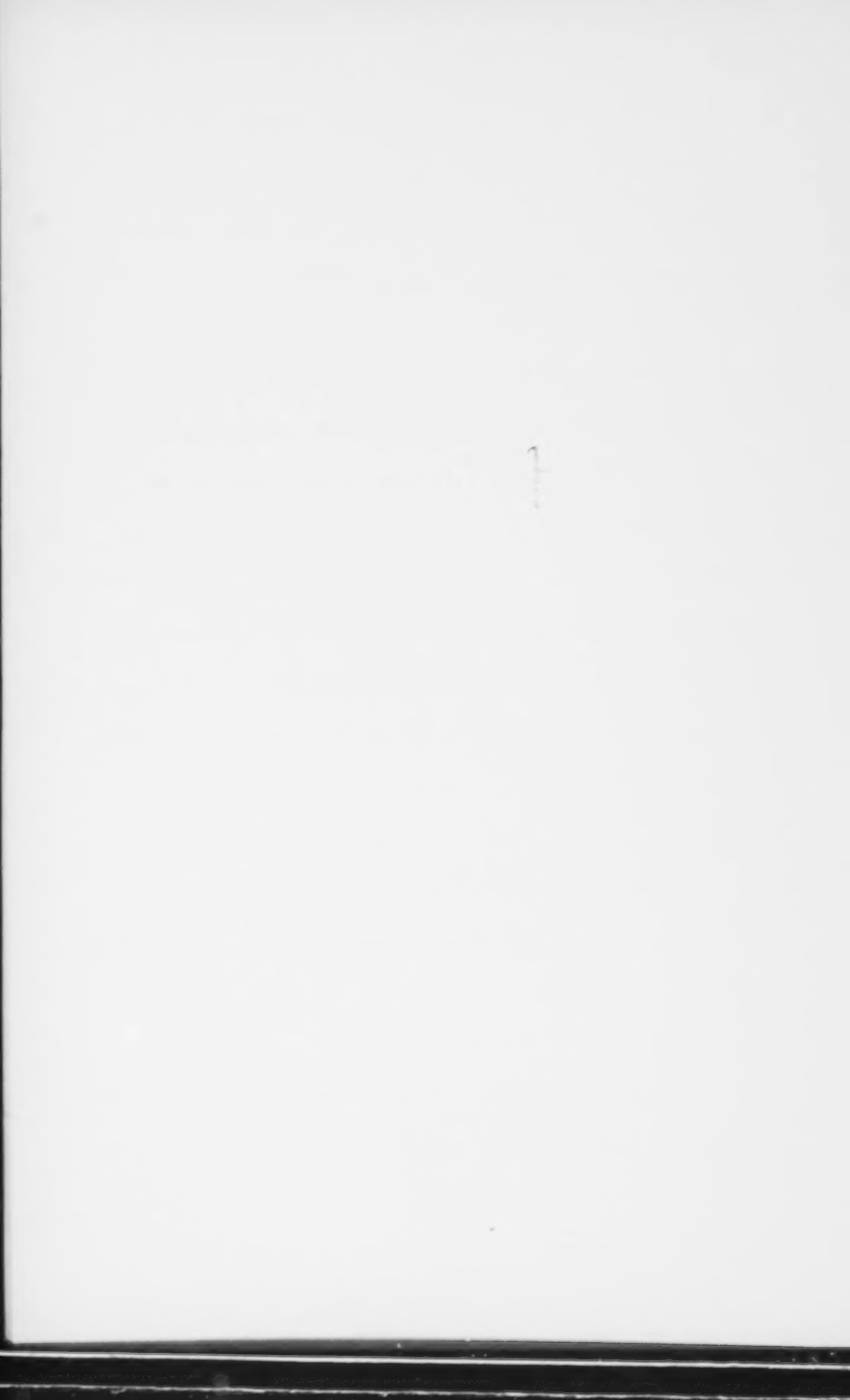
The district court also found that the individual defendants would be entitled to a qualified immunity from suit if they could show that their actions were taken in good faith and were within reason under the circumstances. Scheuer v. Rhodes, 416 U.S. 232 (1974); Wood v. Strickland, 420 U.S. 308 (1975). However, a qualified immunity



would not be available to the official "if he knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the Constitutional rights of the student affected" Id. at 322. The district court found it unnecessary to further address the issue of a qualified immunity because plaintiffs had failed to establish the deprivation of a Constitutional right. We agree. In order to raise a claim in federal courts the plaintiff has to establish the deprivation of a Constitutionally protected property right. The existence of a protectable property right is determined under state law. Board of Regents v. Roth, 408 U.S. 564 (1972).

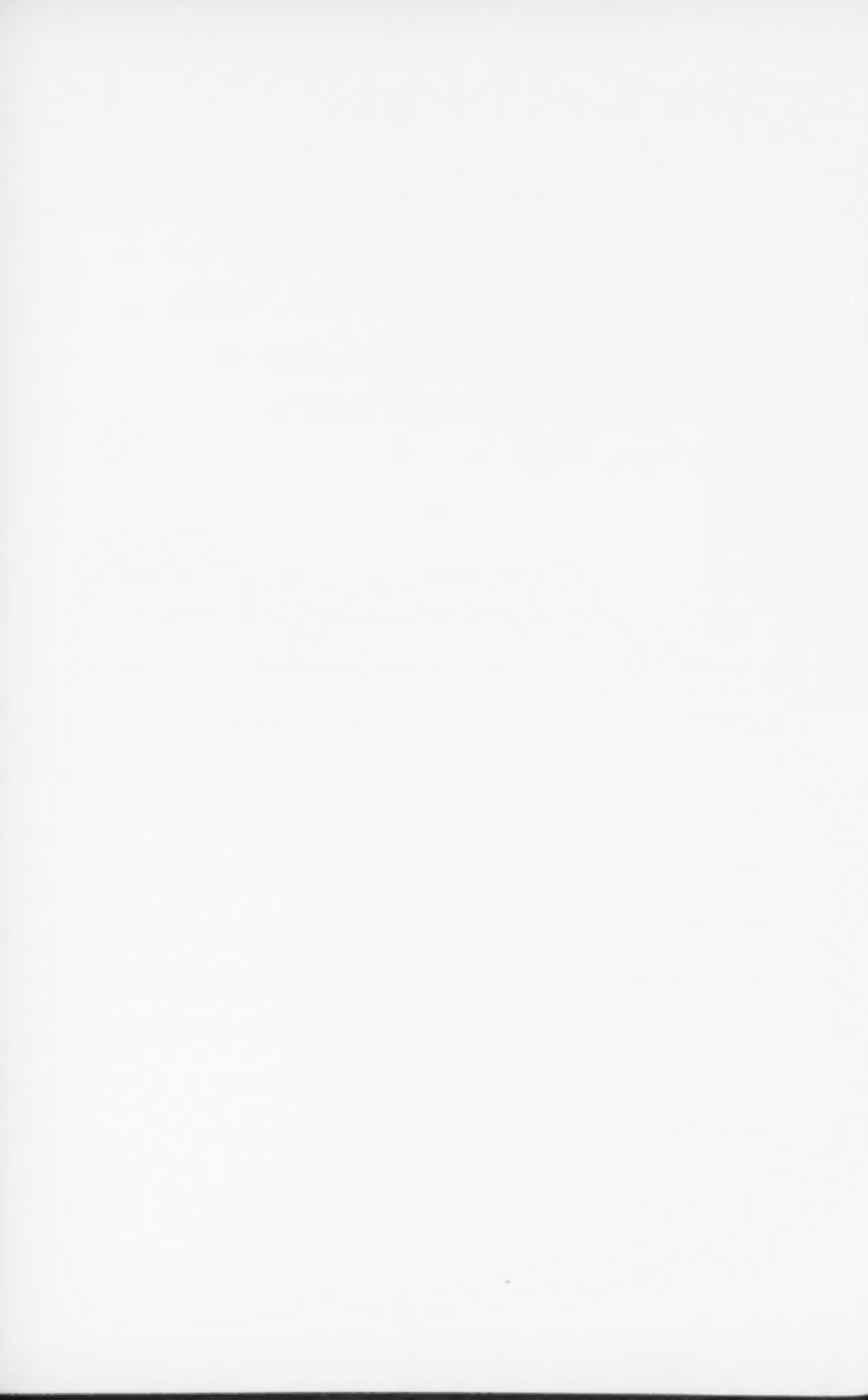
Although plaintiffs argue that they have a property interest under Kentucky's Revised Statute, 18.110(17) a review of the statute indicates to the contrary.

The commissioner of personnel is directed in KRS 18.210(14) to establish rules for "lay-



offs by reasons of lack of funds or work, or abolishment of a position, or material change in duties or organization . . ." An employee who is laid off may appeal that decision as provided in 101 KAR 1:130. KRS 18.210(16) additionally provides that a merit status employee may be discharged only for cause.

Clearly there is a distinction between a discharge and a layoff. Kentucky's statute provides that a discharge cannot take place absent cause. The Kentucky statute governing layoffs contains no requirement to show cause. It permits layoffs due to reorganization, lack of funds, or work, or the abolishment of positions. It is the cause element which confers upon the property right the imprimatur of constitutionality. Although plaintiffs may have had an expectation of continued employment it was a unilateral one and does not rise to the level of a constitutionally protected right.



Plaintiffs did not assert in either their briefs or at oral argument that a protectable liberty interest was violated by the layoff, nevertheless, we agree with the district court's finding that plaintiffs failed to prove the existence of a constitutionally protected liberty interest. The case at bar does not satisfy the requirement that the layoff was a stigma which affected the individuals' reputation or standing in the community. See Board of Regents of State Colleges v. Roth, supra.

Accordingly, the judgment of the Honorable Thomas A. Ballantine of the United States District Court for the Western District of Kentucky is affirmed.



APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

SHELBY E. RIGGS, <u>et al.</u>)
)
PLAINTIFFS)
)
VS.)
)
COMMONWEALTH OF KENTUCKY,)
<u>et al.</u>)
)
DEFENDANTS)

NO. C 81-0544-L(B)
[Decided and Filed January 28, 1983]

MEMORANDUM

This matter is before the Court on the motion of the defendants to dismiss for lack of jurisdiction and for summary judgment.

This is an action brought under 42 U.S.C. Section 1983 alleging constitutional violations resulting from the discharge of a large number of state employees and stating a claim for age discrimination. The Court had remanded the motion pending the outcome of the case of Patsy v. Board of

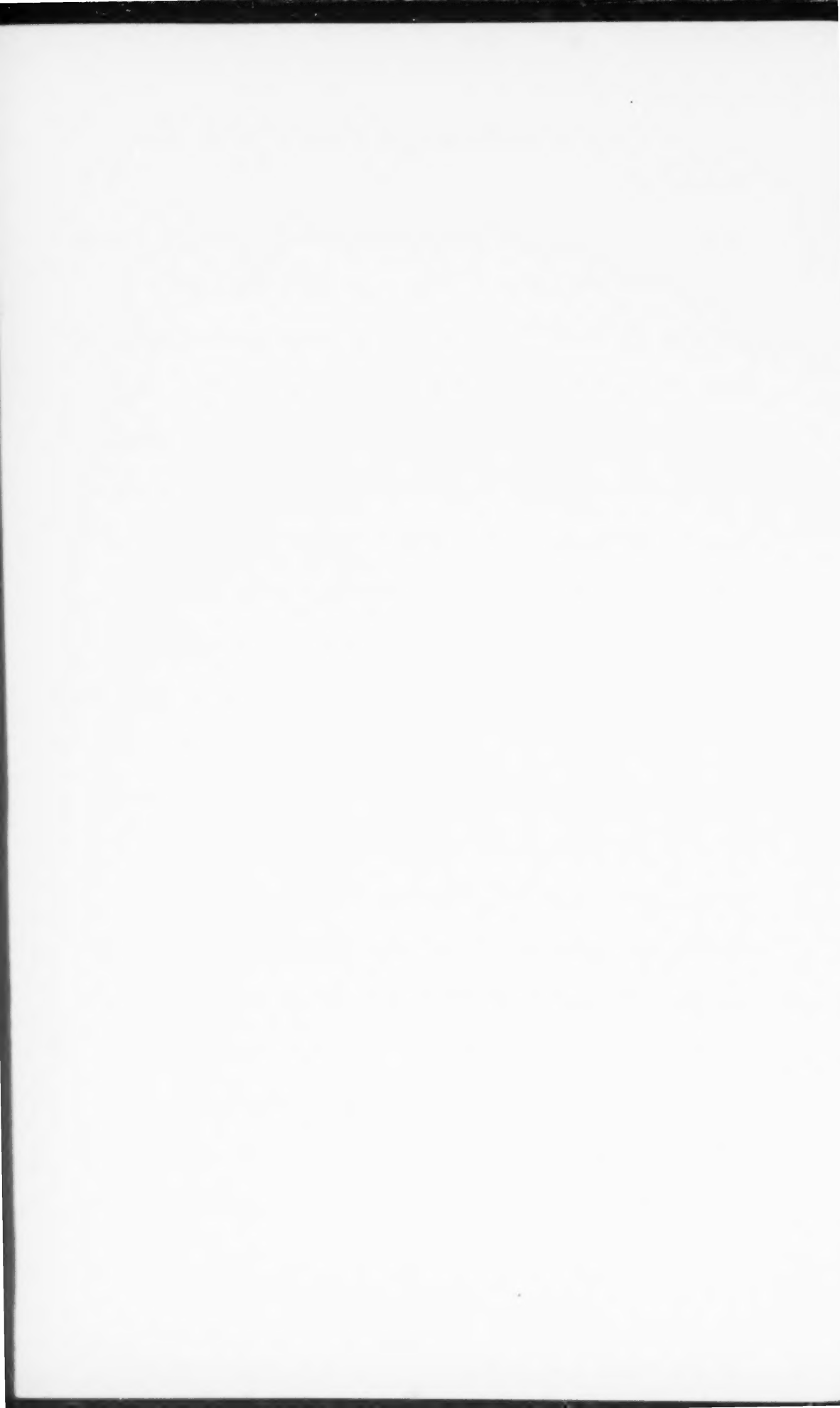
Regents of the State of Florida, ____ U.S.
____, 102 S.Ct. 2557 (1982). That case dealt with the exhaustion of state remedies prior to the bringing of a Section 1983 action. The Supreme Court's having determined that exhaustion of state remedies was not required, we now turn to the matter of the defendants' motion.

The plaintiffs are state merit system employees who were laid off pursuant to plans implemented in December of 1979 and continuing through the present. The defendants are the Commonwealth of Kentucky, the Governor, and thirty-five (35) officers of the Commonwealth, both in their individual and official capacities. The complaint alleges that the defendants formulated and implemented lay-off plans in which they failed to consider the seniority, service records, performance appraisals, conduct and qualifications of the employees to be laid off in violation of the Kentucky statutes and regu-



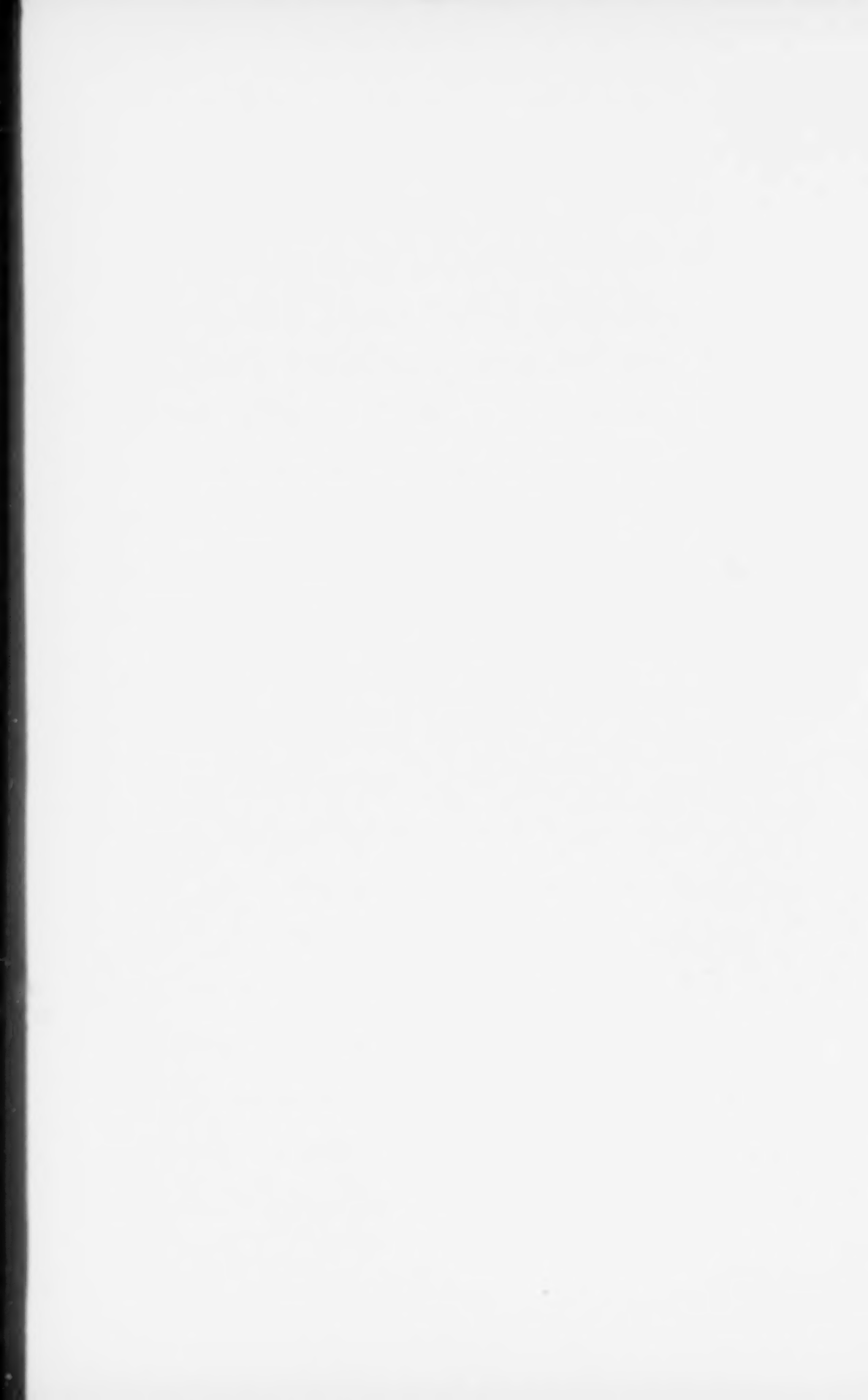
lations. The plaintiffs also allege that the defendants failed to consider the laid-off employees on the reemployment register. The plaintiffs contend that the defendants' improper formulation and implementation of the lay-off plans violated the plaintiffs' due process and equal protection rights afforded them pursuant to Section 1983 and the Fourteenth Amendment to the United States Constitution. The plaintiffs also claim that the lay-off plans as implemented had a disparate impact on those persons who were over 40 years of age.

The defendants seek to have dismissed Counts one through four of the complaint, based upon the allegation that the Court lacks jurisdiction of the subject matter by virtue of the Eleventh Amendment to the U.S. Constitution. Although the Eleventh Amendment by its terms is not applicable to a suit against a state by one of its own citizens, the immunity afforded by the amendment



long has been held to extend to such an instance. Hans v. Louisiana, 134 U.S. 1, 10 S.Ct. 504 (1890). The Eleventh Amendment has been held to be a bar to Section 1983 actions against a state. Quern v. Jordan, 440 U.S. 332, 99 S.Ct. 1139 (1979); Alabama v. Pugh, 438 U.S. 781, 98 S.Ct. 3057 (1978). It is clear that the action against the Commonwealth of Kentucky is barred by the protection afforded under the Eleventh Amendment.

The defendants also urge dismissal of the first four counts of the complaint as against the individual defendants on the grounds that they also are immune from suit under the Eleventh Amendment. The case of Edelman v. Jordan, 415 U.S. 651, 94 S.Ct. 1347 (1974), confirmed the rule that a federal court claim made by private parties against a state which could result in payment having to be made from the public funds in the state treasury is barred by the Eleventh Amendment.

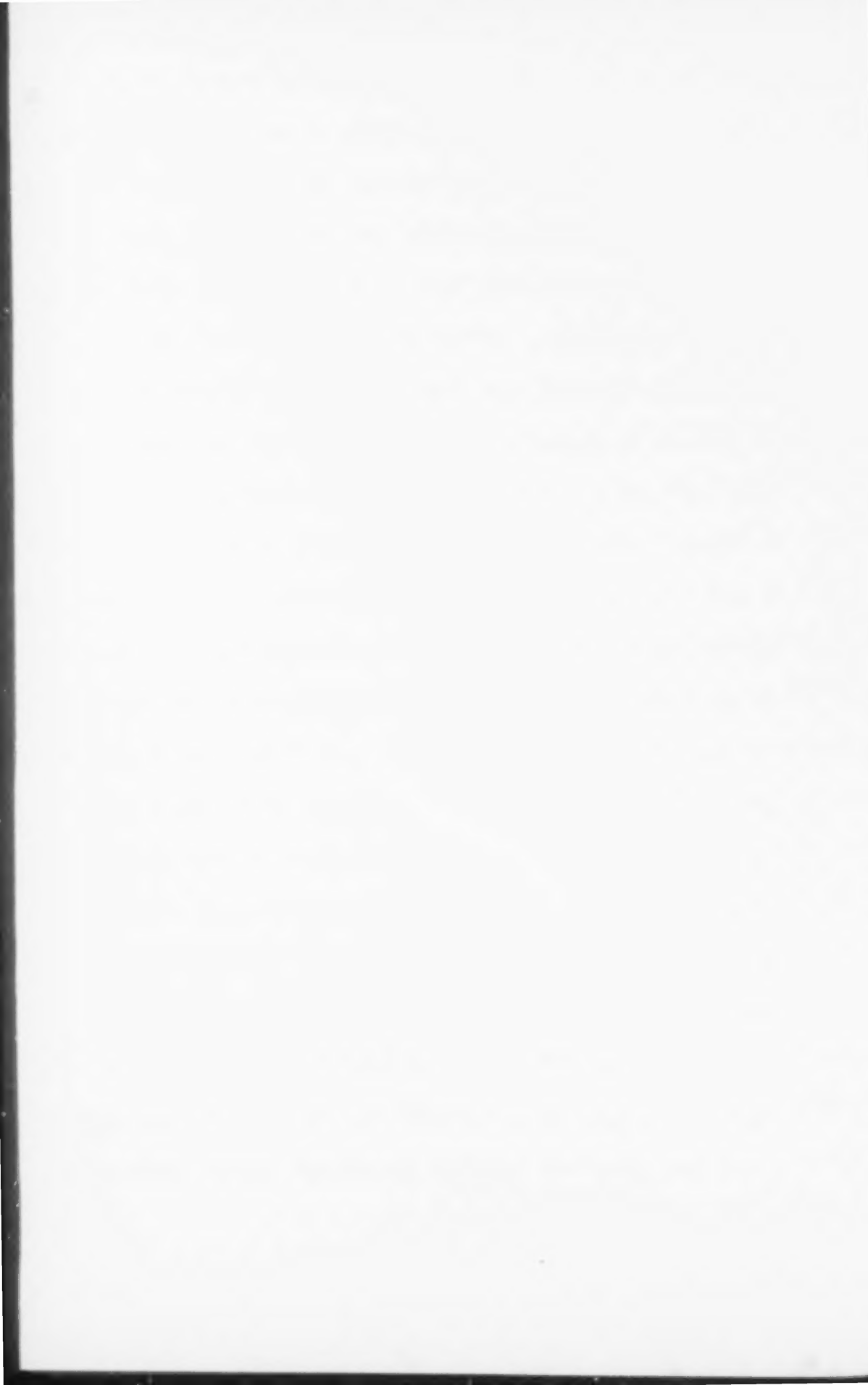


However, in the much earlier case of Ex parte Young, 209 U.S. 123, 28 S.Ct. 441 (1908), it was held that state officials could be enjoined to conform their conduct in the future to federal requirements, even though such might cause funds to be expended from the state treasury. These holdings were explained in Quern v. Jordan, supra, to distinguish retrospective from prospective relief. Applying these principles to the instant case, we determine that the claims against the state officers insofar as they might result in a retrospective liability to the state must be dismissed. The state officers' liability, if any, may be only prospective.

The individual defendants insist that • they are absolutely immune from liability. The defendants, as state officials, may rely only on the qualified immunity explained in Scheuer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683 (1974) and Wood v. Strickland, 420 U.S.

308, 95 S.Ct. 992 (1975). Those cases held that executive officers should not need to exercise discretion with undue timidity. Therefore, actions taken in good faith and within reason under the circumstances will not be punished. However, the qualified immunity is not available if the official "knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the student affected, or if he took the action with the malicious intention to cause a deprivation of constitutional rights . . ." Id. at 322, 95 S.Ct. at 1001. The defendants argue that even if qualified immunity is applicable here, the complaint should be dismissed because the plaintiffs have not established the deprivation of a constitutional right.

The plaintiffs maintain that they have a property interest in continued employment because of having attained merit employee



"status" which is defined in KRS 18.110(17), as "tenure with all rights and privileges appertaining thereunto . . ." The plaintiffs argue that merit status employees can be demoted or affected adversely in their employment only for cause. In Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701 (1972), the Supreme Court, in discussing property interests in employment, stated that such interests are created and defined by state law and rules. With this in mind, we examine the applicable Kentucky law.

The commissioner of personnel is directed in KRS 18.210(14), to establish rules for "lay-offs by reasons of lack of funds or work, or abolishment of a position, or material change in duties or organization . . ." Rules were established in 101 KAR 1:120 Section 2. An employee who is laid off may appeal that decision as provided in 101 KAR 1:130. KRS 18.210(16) additionally provides that a merit

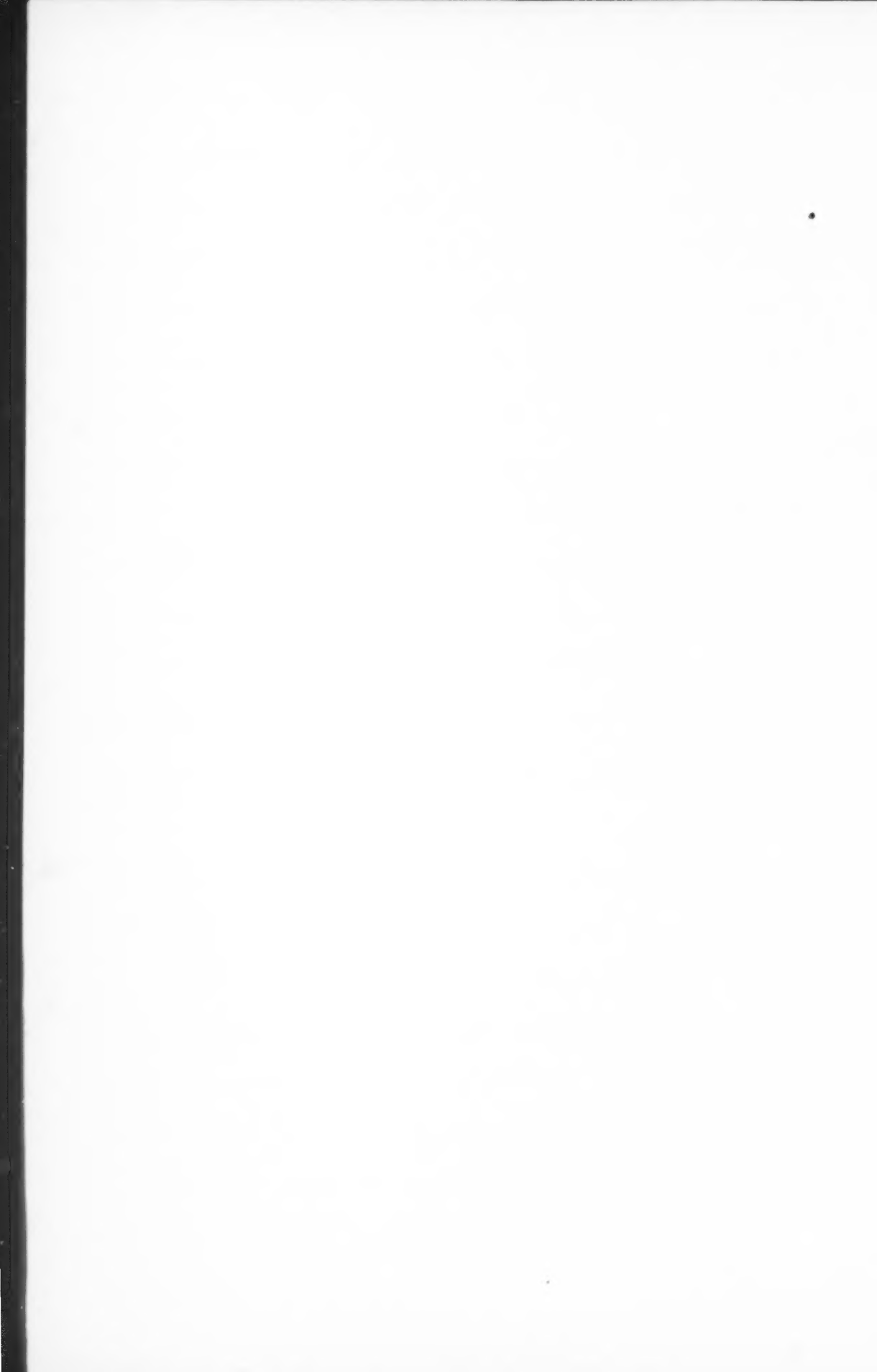


status employee may be discharged only for cause. While we agree that a state employee may be discharged only for cause, a lay-off which is not the same as a discharge does not require "cause". Under the Kentucky statutes and regulations, KRS 18.210 and 101 KAR 1:120, reemployment of a laid-off worker is specifically contemplated, but not for the discharged employee. The Kentucky statutes and regulations provide certain protection for employees in the procedure for appeals of lay-offs and discharges, but in no way indicate that an employee is guaranteed a permanent position.

The plaintiffs argue that their case is analogous to that of the state employee in Thompson v. Bass, 616 F.2d 1259 (5th Cir. 1980), cert. den., 449 U.S. 983, 101 S.Ct. 399. We cannot agree. In Thompson, the Alabama law provided only for discharge for cause. That is not the case here. The Kentucky personnel statutes provide for discharge for cause, but they also provide for

lay-off due to reorganization, lack of funds or work, or the abolishment of a position. It is obvious that a lay-off plan does not have to incorporate "cause" as used in the discharge provisions. A Kentucky employee may not argue that he or she may be discharged only for cause and feign ignorance of the statutory provision for lay-off which does not include a "cause" determination. A Kentucky employee's claimed entitlement to continued employment is no more than a unilateral expectation and does not rise to the level of a constitutionally protected property right. Board of Regents of State Colleges v. Roth, supra.

The plaintiffs also allege a liberty interest in their positions, based upon their contention that their lay-offs might indicate they were less capable or performed less ably than employees who were not laid off. This claim is a far cry from the situation of a state's making charges against



the employees which could result in damage to their community standing and associations as discussed in the Roth case. Especially in a troubled economy, we fail to perceive how being laid-off could in any way stigmatize an employee, let alone rise to the level of a deprivation of liberty.

The plaintiffs have failed to establish any constitutional deprivations in their complaint. Further, the plaintiffs have not alleged any individual wrongdoing on the part of any of the defendants. The defendants' motions to dismiss Counts one through four of the complaint must be granted.

The defendants move for summary judgment on Count five of the complaint which states a claim of age discrimination. The defendants argue that summary judgment is proper because no claim was filed with the Equal Employment Opportunity Commission within the 180 or 300 day requirement of 29 U.S.C. Section 626 and no disparate impact was



caused to persons over 40 years of age. The plaintiffs respond that at least two timely claims were filed and that those claims are sufficient for the whole class of plaintiffs. Plaintiffs further maintain that a material fact issue exists with respect to the alleged disparate impact on those persons over 40 years of age.

A motion for summary judgment will be granted only where there is no genuine issue as to any material fact and where the moving party is entitled to judgment as a matter of law. F.R.Civ.P. 56. In considering a motion for summary judgment, all inferences must be drawn most favorably toward the party resisting the motion. State Mutual Life Assurance Company of America v. Deer Creek Park, 612 F.2d 256 (6th Cir. 1979).

The plaintiffs insist that, at least, the affidavits of Marvin Cole and Billy Furnish were filed within the time requirement of 29 U.S.C. Section 626. Each affidavit refers to



claims having been filed with the E.E.O.C. However, neither has attached to it any copies of the claims filed as required by F.R.Civ.P. 56(e). For this reason, the defendants argue that the affidavits are insufficient.

Mr. Cole's affidavit states that he was given no papers, but that he was told recently that he had a complaint on file which would relate back to September of 1980. Mr. Cole had been laid-off on May 15, 1980. Mr. Furnish's affidavit merely states that he filed a charge with the E.E.O.C. Especially in the situation of Mr. Cole where he was given no papers, we cannot state that the affidavits are insufficient to prevent the entry of a summary judgment. In avoidance of a summary judgment, the affidavits support an inference that a claim was filed with E.E.O.C., leaving the issue of the sufficiency of that filing under 29 U.S.C. Section 626(d) to be determined. Smith v. Liberty Mutual

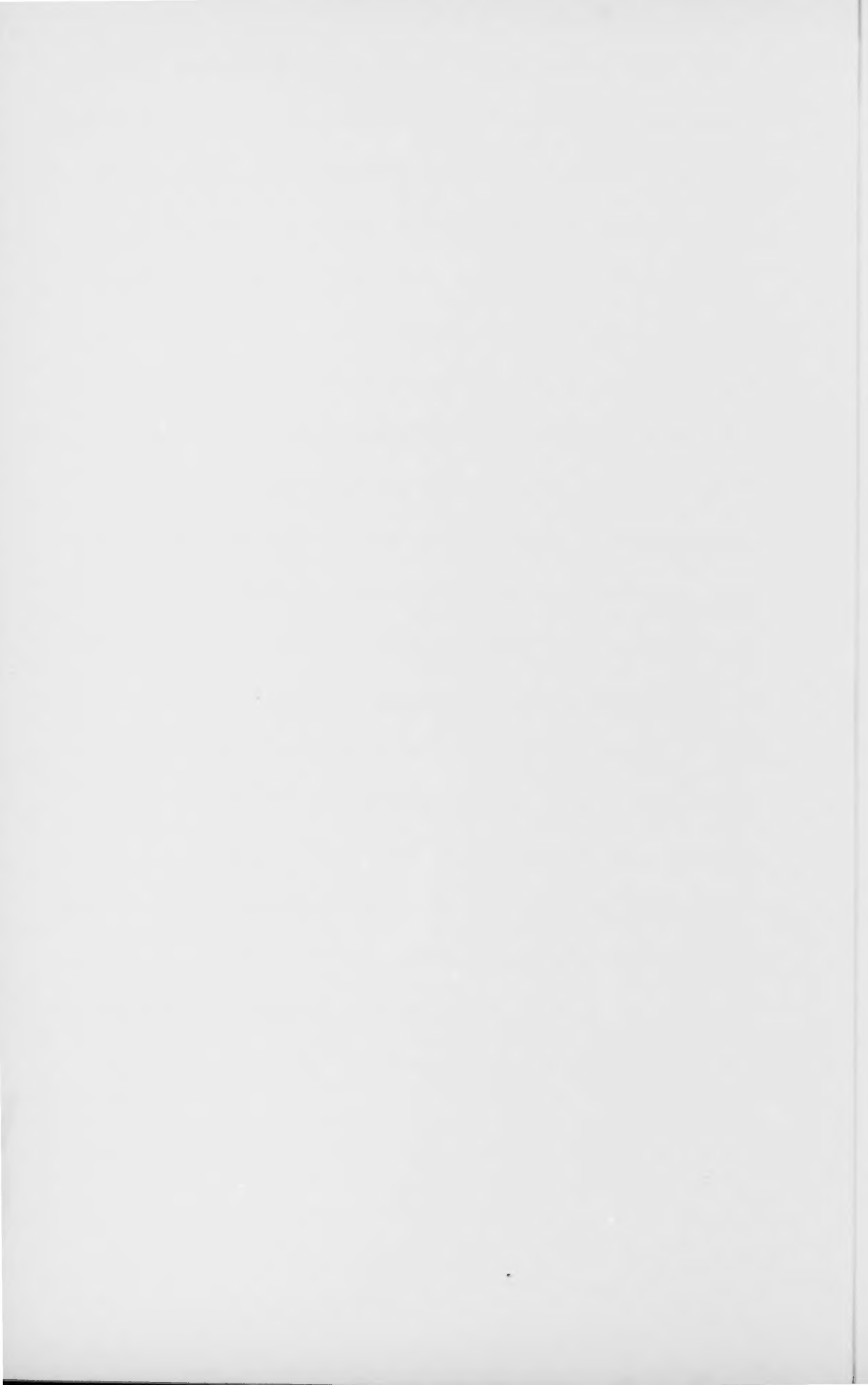


Insurance Co., 409 F. Supp. 1211 (M.D. N. Car. 1976).

The defendants argue that even if these two complaints are found to have been filed in a timely manner, they are not sufficient to provide notice for the entire class. It has been held that a notice filed by an individual on behalf of himself and similarly situated employees, satisfied the notice requirement for the class. Bean v. Crocker National Bank, 600 F.2d 754 (9th Cir. 1979); Mistretta v. Sandia Corp., 639 F.2d 588 (10th Cir. 1980). Mr. Furnish stated in his affidavit that he filed the complaint with E.E.O.C. because he believed that he and others were discriminated against on the basis of age. Again, drawing the inference most favorable to the party opposing the summary judgment motion, Mr. Furnish's affidavit supports an inference of a filing on behalf of all those persons similarly situated.

The defendants last urge summary judgment on the age discrimination claim because the statistics of the defendants show that the number of employees over 40 actually increased after the lay-offs. While this may be true, the plaintiffs' affidavits state that they were replaced by persons of less seniority and training, giving rise to a permissible inference that the replacement employees were younger persons. The ultimate issue is whether age was a factor in the employer's decision. Ackerman v. Diamond Shamrock Corp., 670 F.2d 66 (6th Cir. 1982). The plaintiffs, at this time, have kept the issue open, so as to preclude the entry of a summary judgment.

The motion of the defendants to dismiss Counts one through four of the complaint is granted and the motion for summary judgment on Count five is denied.



An appropriate order has been entered
this date.

January 28, 1983

/S/ Thomas A. Ballantine, Jr.
THOMAS A. BALLANTINE, JR.
UNITED STATES DISTRICT JUDGE

Copies to:

Counsel of Record

APPENDIX C

NO. 83-5137
UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

SHELBY RIGGS, <u>et al.</u> ,)	
)	
PLAINTIFFS-APPELLANTS,)	
)	
VS.)	O R D E R
)	
COMMONWEALTH OF KEHTUCKY)	
<u>et al.</u> ,)	
)	
DEFENDANTS-APPELLEES)	

[Filed May 1, 1984]

BEFORE: KEITH, KRUPANSKY, Circuit Judges
and PHILLIPS, Senior Circuit Judge
Upon consideration of the appellants' petition for rehearing filed with the Court,

It is ORDERED that the petition for rehearing be and it hereby is denied.

ENTERED BY ORDER OF THE COURT

/S/ John P. Hehman
JOHN P. HEHMAN, CLERK

No. 84-149

Office-Supreme Court, U.S.
FILED
AUG 24 1984
ALEXANDER L. STEVAS,
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

SHELBY RIGGS, ET AL.

PETITIONER

v.

COMMONWEALTH OF KENTUCKY,
ET AL.

RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION

DONALD H. BALLEISEN
PATRICK A. NEPUTE
DOROTHY M. PITT

3300 First National Tower
Louisville, Kentucky 40202
(502) 589-4200

COUNSEL FOR ALL RESPONDENTS
EXCEPT PHILIP TALIAFERRO,
LIBBY WALTHALL, JAMES S. WAY,
JACK RAZOR AND JOHN MCNEILL

GREENEBAUM DOLL & McDONALD
Of Counsel

August 22, 1984

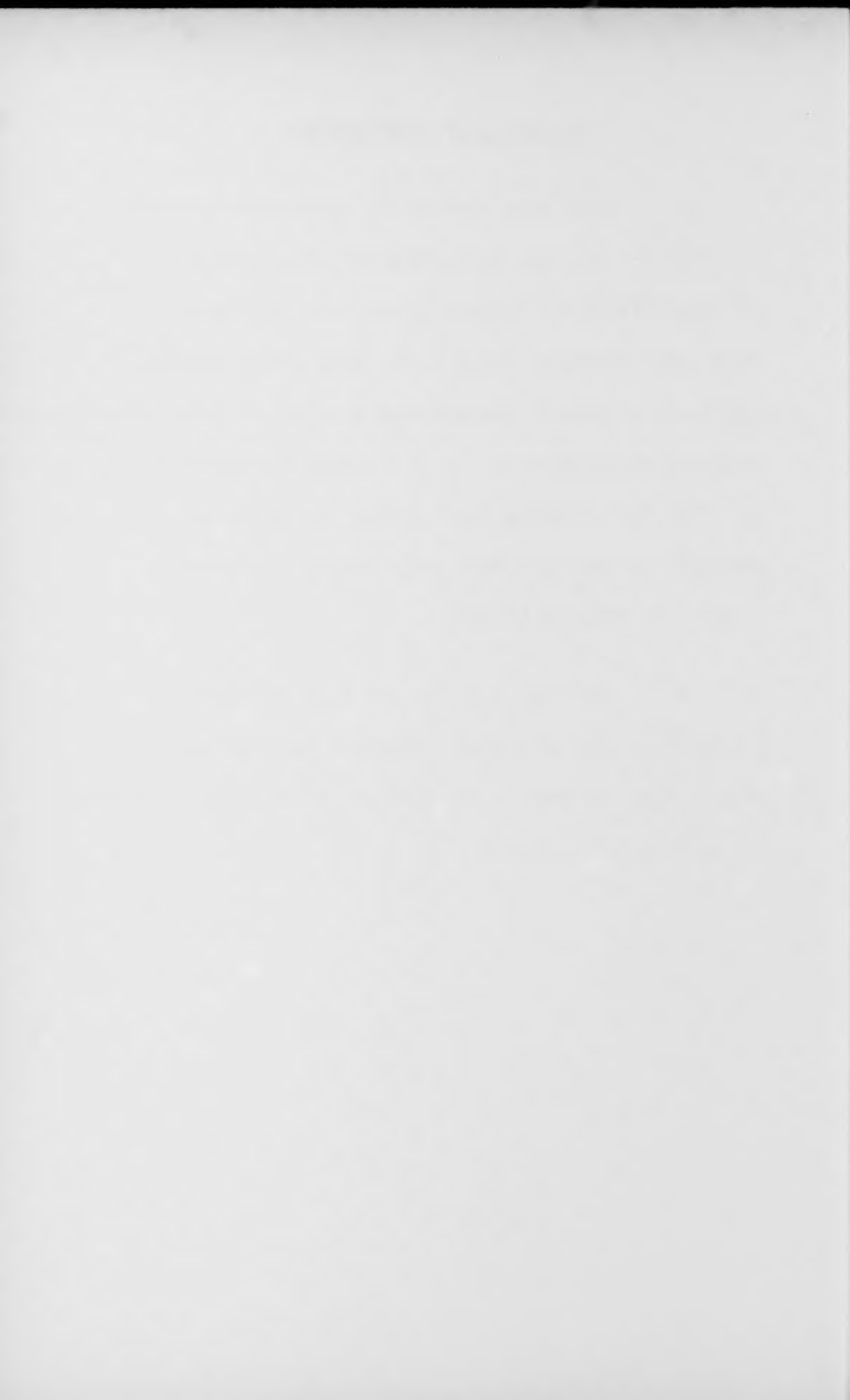
BEST AVAILABLE COPY

QUESTIONS PRESENTED

A. Was the Court of Appeals correct in affirming the judgment of dismissal of the District Court upon the grounds that the record failed to disclose that:

(1) Petitioners possessed either a constitutionally protected property or a liberty right; or (2) Defendants had acted in such a manner as to violate any constitutional right of Plaintiffs?

B. Do the claims of Plaintiffs involve only alleged failure to follow state law which is not within the jurisdiction of a federal court?



INDEX

QUESTIONS PRESENTED.....	i
STATEMENT.....	1
I. THE ECONOMIC AND LEGAL BACKGROUND.....	1
II. THE LAYOFFS.....	4
III. THE PROCEEDINGS BELOW.....	5
SUMMARY OF ARGUMENT.....	11
REASONS FOR DENYING THE WRIT.....	12
I. NO PROPERTY OR LIBERTY RIGHT IS PRESENT IN THIS CASE.....	12
A. Petitioners Have No Pro- tected Property Interest in State Employment.....	12
B. No Protected Liberty Interest is Involved....	17
II. ONLY QUESTIONS OF STATE LAW ARE INVOLVED.....	20
III. DEFENDANTS' QUALIFIED IMMU- NITY BARS THE CLAIM OF PETITIONERS.....	22
CONCLUSION.....	24
APPENDIX A	

TABLE OF CASES AND AUTHORITIES

Cases:

<u>Bishop v. Wood</u> , 426 U.S. 341, 349-50 (1976).....	22
<u>Board of Education v. Vail</u> , ___ U.S. ___, 104 S.Ct. 2144 (1984), <u>affirming</u> 706 F.2d 1435 (7th Cir. 1983).....	16
<u>Board of Regents v. Roth</u> , 408 U.S. 564 (1972).....	12, 13 18
<u>Cleveland Board of Education v. Loudermill</u> , 721 F.2d 550 (6th Cir. 1983), <u>cert granted</u> 104 S.Ct. 2384 (1984).....	17
<u>Davis v. Scherer</u> , ___ U.S. ___, 52 U.S.L.W. 4956 (1984).....	23, 24
<u>Fishgold v. Sullivan Dry Dock & Repair Corp.</u> , 328 U.S. 275 (1946)...	19, 20
<u>Ford Motor Company v. Department of Treasury</u> , 323 U.S. 459 (1945)....	21
<u>Hudson v. Palmer</u> , ___ U.S. ___, 52 U.S.L.W. 5052 (1984).....	16
<u>Logan v. Zimmerman Brush Co.</u> , 445 U.S. 422, 432 (1982).....	15, 16
<u>Parratt v. Taylor</u> , 451 U.S. 527 (1981).....	16
<u>Pennhurst State School & Hospital v. Halderman</u> , ___ U.S. ___, 52 U.S.L.W. 4155 (1984).....	21, 22
<u>Perry v. Sindermann</u> , 408 U.S. 593 (1972).....	13, 16
<u>Riggs v. Commonwealth of Kentucky</u> , 734 F.2d 262 (6th Cir. 1984).....	10

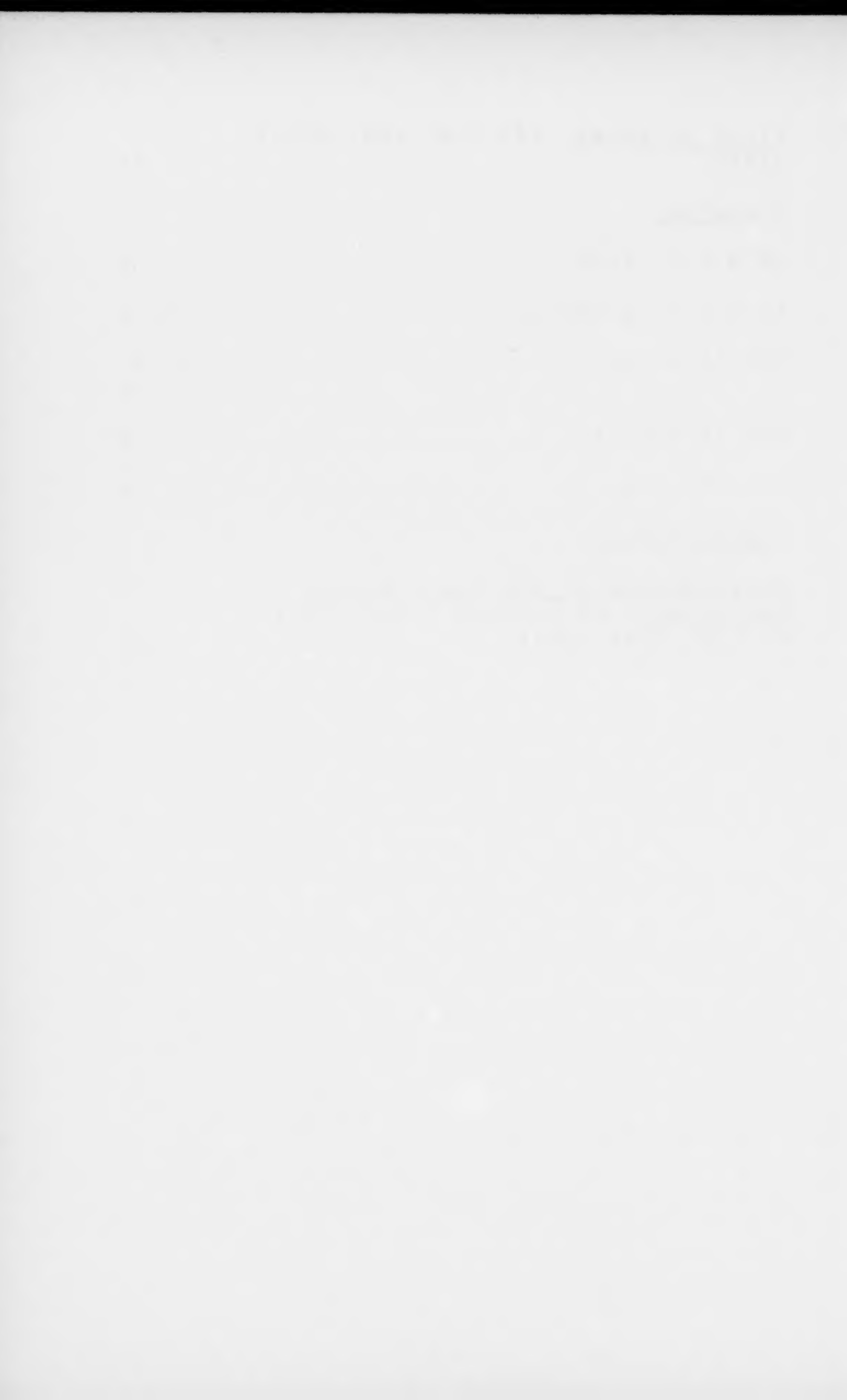
<u>Vitek v. Jones</u> , 445 U.S. 480, 490-1 (1980).....	15
------------------------------------------------------------	----

Statutes:

29 U.S.C. §626.....	6
42 U.S.C. §1983.....	5, 6
KRS 18.210(4).....	3, 4, 14
KRS 18.210(14).....	9
101 KAR:120.....	3, 14

Miscellaneous:

<u>Developments in the Law - Public Employment</u> , 97 Harvard L.Rev. 1611 at 1780-1794 (1984).....	19
-------------------------------------------------------------------------------------------------------------	----



**IN THE
SUPREME COURT OF THE UNITED STATES**

No. 84-149

October Term, 1984

SHELBY RIGGS, ET AL.

PETITIONER

v.

**COMMONWEALTH OF KENTUCKY,
ET AL.**

RESPONDENTS

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

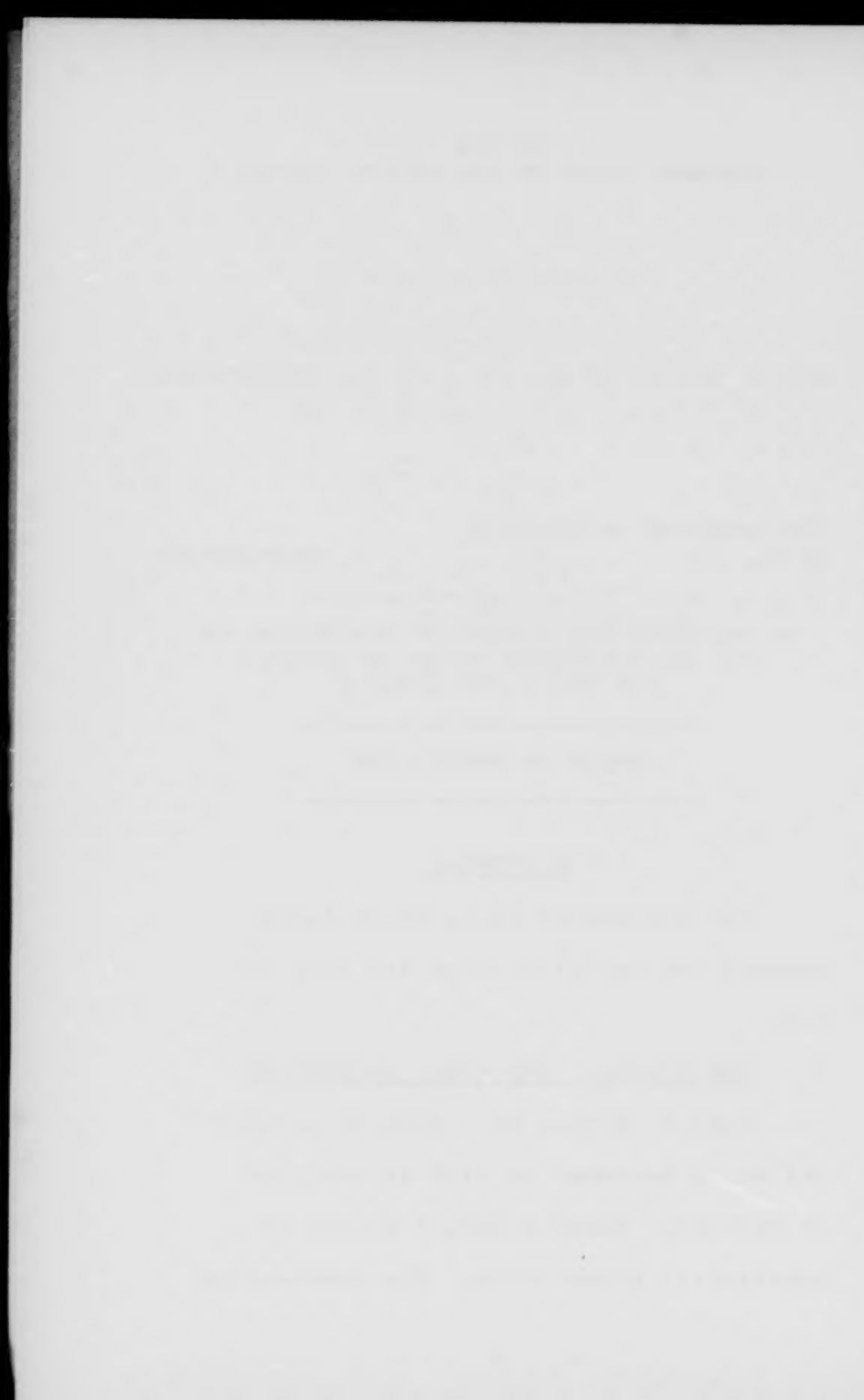
BRIEF IN OPPOSITION

STATEMENT

The undisputed facts which fully support the decision below are here set out.

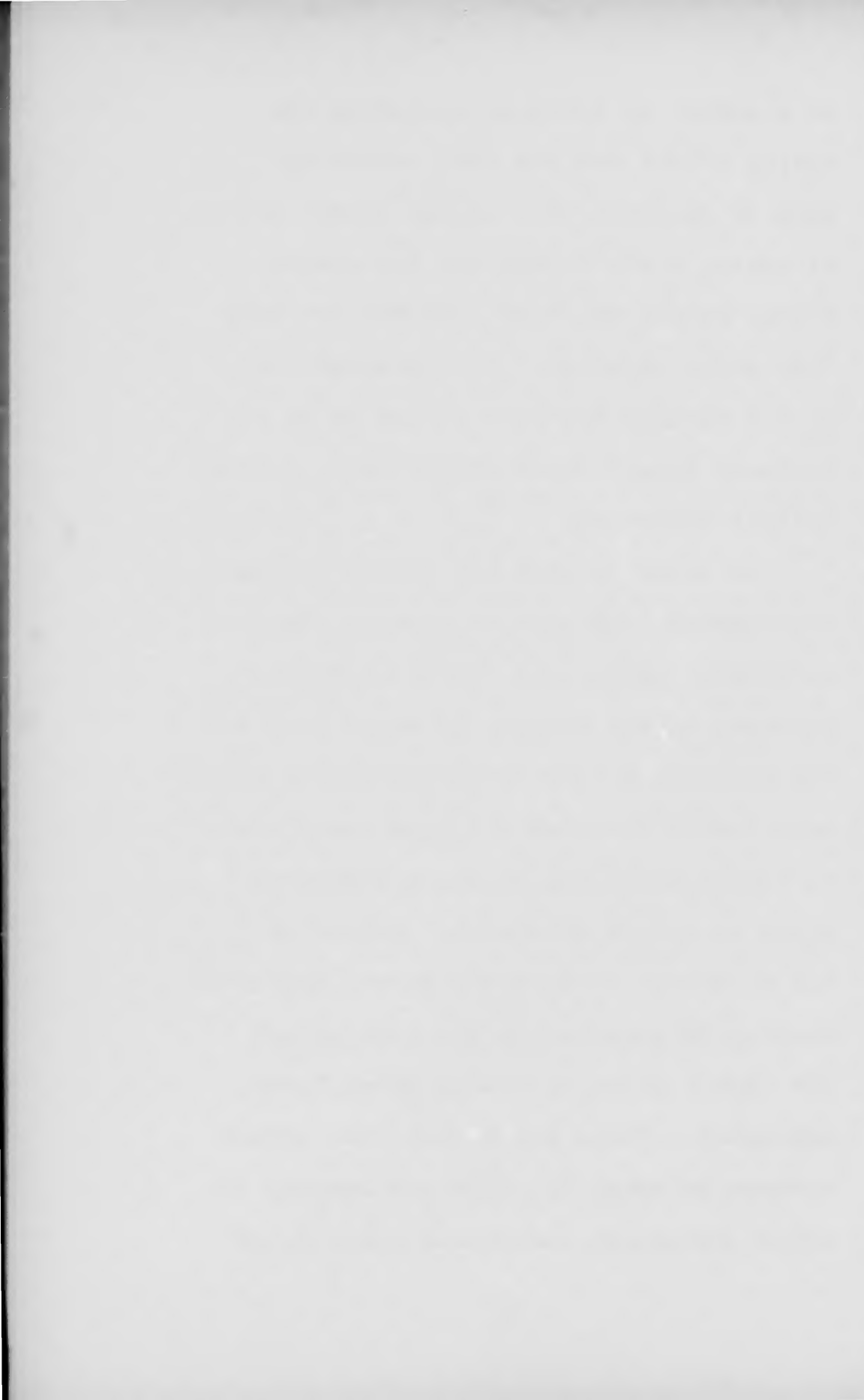
I. THE ECONOMIC AND LEGAL BACKGROUND

John Y. Brown, Jr., when he assumed office in December of 1979 as Governor of Kentucky, faced a budget crisis of substantial proportions. The combination



of a number of factors, including the energy crisis and the then recession, made it apparent that unless prompt action be taken, state income for the coming fiscal period would be \$400 Million less than state revenues. This created the crisis because Sections 49 and 50 of the Kentucky Constitution specifically forbid deficit financing.

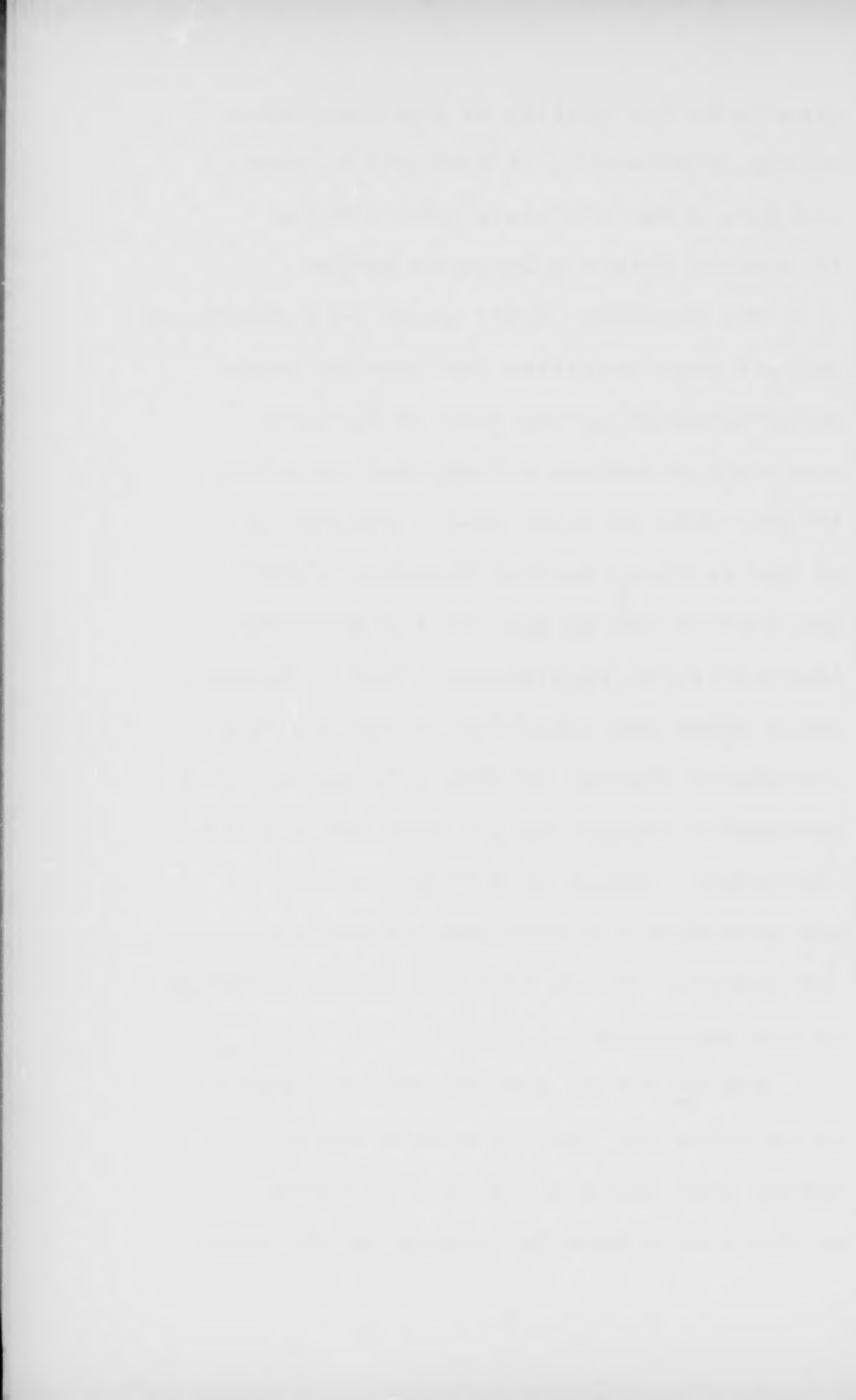
In order to meet the constitutional requirement, and also to promote improved government operations, Governor Brown, pursuant to KRS Chapter 12 which grants the governor authority to reorganize state government, directed all department heads to review their operations and develop plans to reduce personnel. Following the directive of Governor Brown, approximately 30 departments put into effect 254 layoff plans involving about 1,800 employees. These plans went into effect between December 11, 1979 and October 19, 1981. Personnel reductions contributed



greatly to the ability of the government of the Commonwealth of Kentucky to meet its duty under the state constitution to operate within a balanced budget.

The numerous layoff plans were developed and put into operation pursuant to procedures mandated by the laws of Kentucky and the regulations established according to the terms of those laws. Chapter 18 of the Kentucky Revised Statutes ("KRS") and Section 101 et seq. of the Kentucky Administrative Regulations ("KAR"), promulgated under the authority of various provisions of Chapter 18 KRS, provide detailed procedures regulating all aspects of state employment, including hiring, layoff, and providing for both administrative and judicial review of state action relative to its employees.

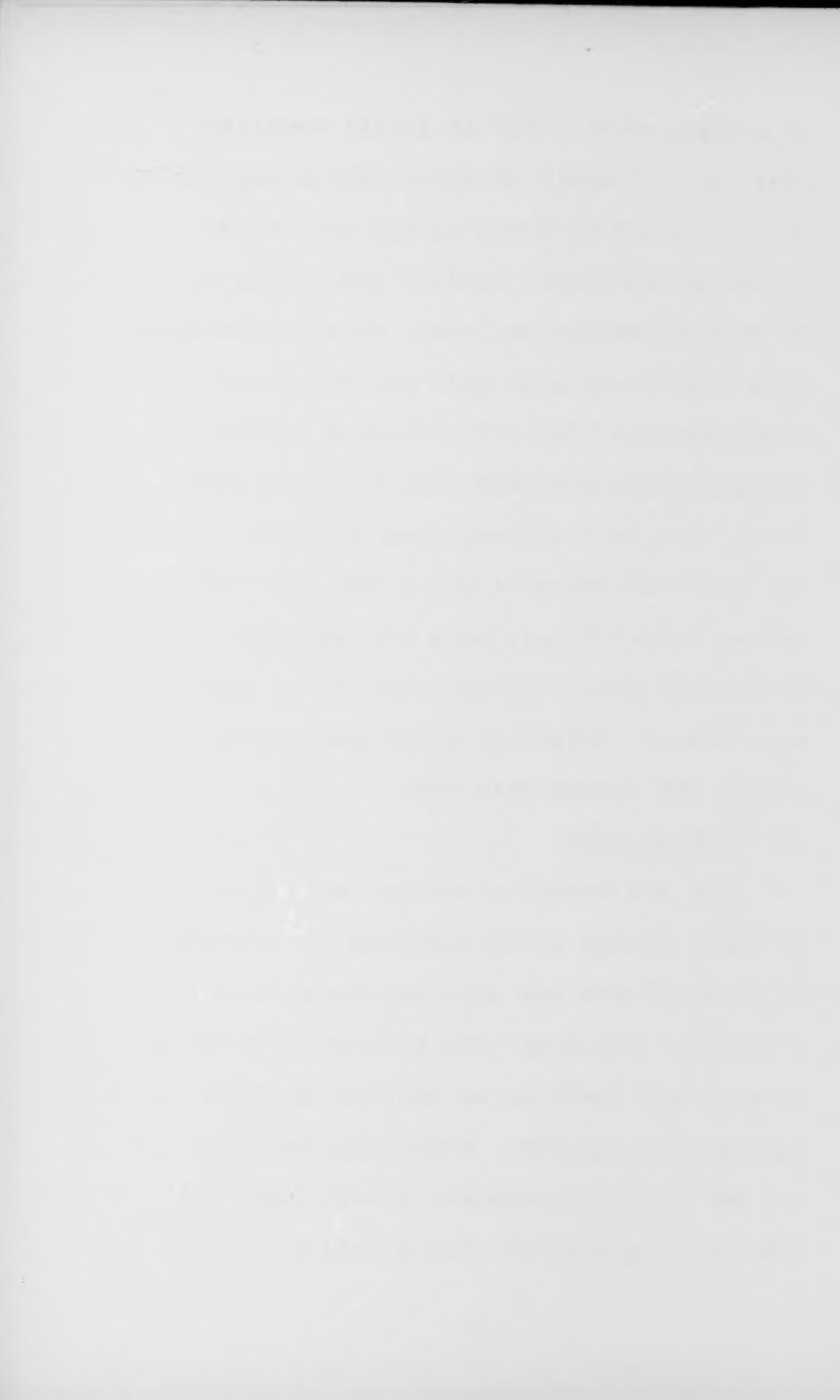
KRS 18.210(4) and 101 KAR:120 specifically allow for layoffs within the merit system when there are a lack of funds or there is a material change in the needs



of a department. KRS 18.210(4) requires that in the layoff of merit system employees, consideration be given to the qualifications, performance, conduct and seniority of each employee involved. Numerous reemployment rights are also made available to those who are laid off. Persons discharged for cause are afforded none of these benefits. The laid off employee also has the right of administrative and judicial review. Petitioners were all advised of these rights. Since other state jobs were scarce, offers of other employment within the system were few.

II. THE LAYOFFS

The 254 layoff plans varied widely in their method of determining who should be laid off and how many employees were involved. The departments differed greatly in size and function as well as in their approach to layoffs. Some departments cut out entire functions, others combined functions, and still others basically

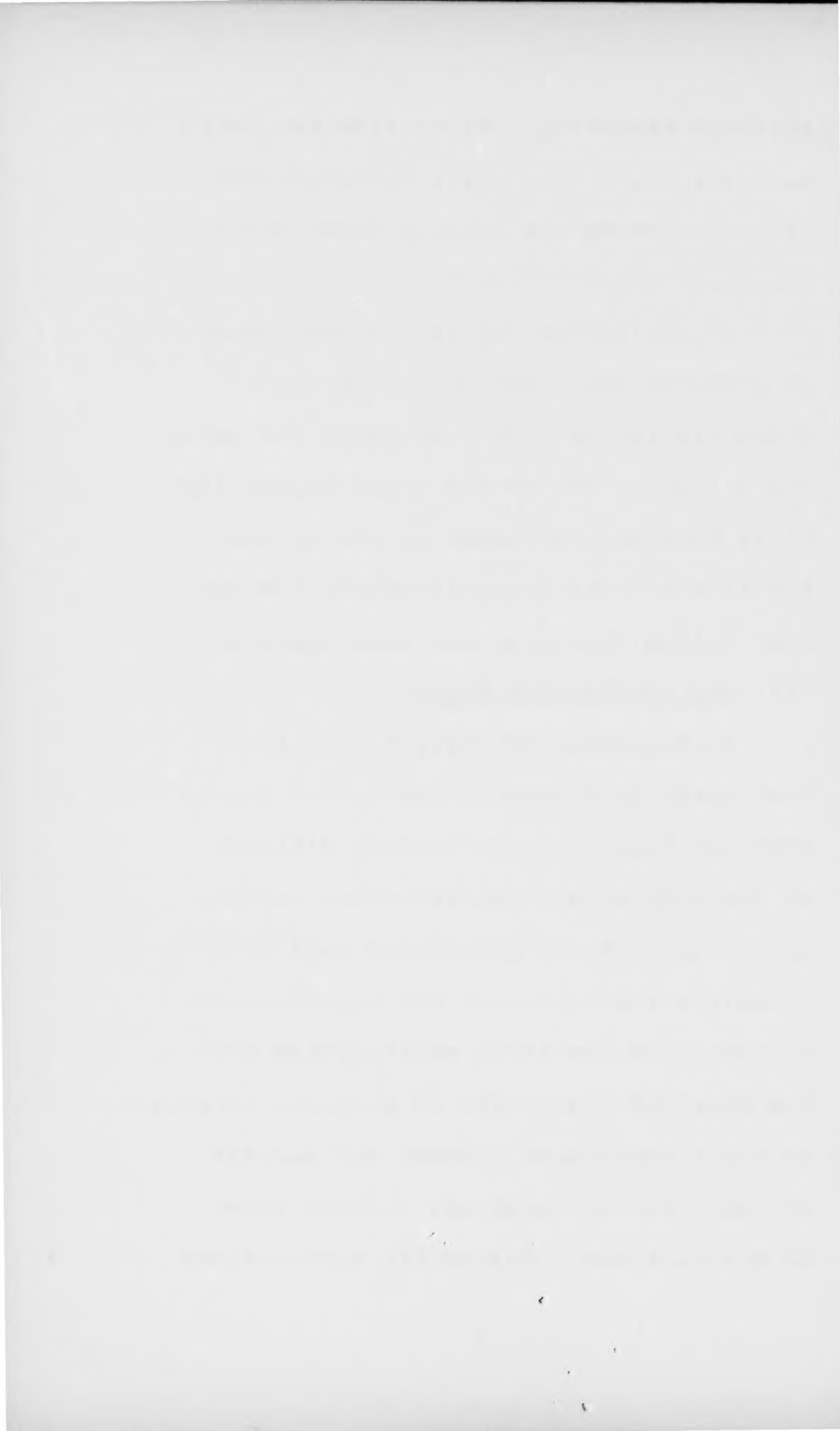


followed seniority. At no time has there been any claim that there was any unity of action among the various departments involved.

Following the layoffs, a good number of affected employees exercised their statutory review rights although the majority did not. One of the named Plaintiffs, Billy Furnish, succeeded in having the Franklin Circuit Court reinstate him and that ruling, in turn, has been appealed.

III. THE PROCEEDINGS BELOW

In September of 1981, Plaintiffs instituted this case in the United States District Court for the Western District of Kentucky as a purported class action, asserting that the procedures used to formulate and implement the layoff plans circumvented the state merit system and had deprived Plaintiffs of property interests in their employment without due process of law. Jurisdiction was claimed under 42 U.S.C. §1983. Plaintiffs also claimed



that the plans had a disparate impact on employees over the age of 40. No allegation of wrongdoing or improper conduct was set out.

On November 16, 1981, prior to answering, Defendants moved to dismiss Counts I through IV¹ of Plaintiffs' Complaint on the grounds that: (i) Plaintiffs' claims against the Commonwealth of Kentucky, and certain of their claims against the individual Defendants, were barred by the Eleventh Amendment to the Constitution of the United States; (ii) Plaintiffs' Complaint failed to state a claim under 42 U.S.C. §1983, because Plaintiffs lacked

¹ Defendants further moved to Dismiss Count V of Plaintiffs' Complaint, alleging violations of the Age Discrimination in Employment Act ("ADEA" 29 U.S.C. § 626), which Motion was denied. Plaintiffs were subsequently denied class certification with respect to the remaining ADEA claims. The remaining claims of two individual Plaintiffs are presently pending before the Western District, and are not addressed in the instant action.

protected liberty and property interests in state employment; and (iii) the individual Defendants, as State Officials, were immune from liability.

On January 28, 1983, the District Court entered an Order dismissing Counts I through IV of Plaintiffs' Complaint. The grounds for the Court's decision were set forth in an extensive Memorandum (the "Memorandum Opinion"), Appendix² B to Petition.

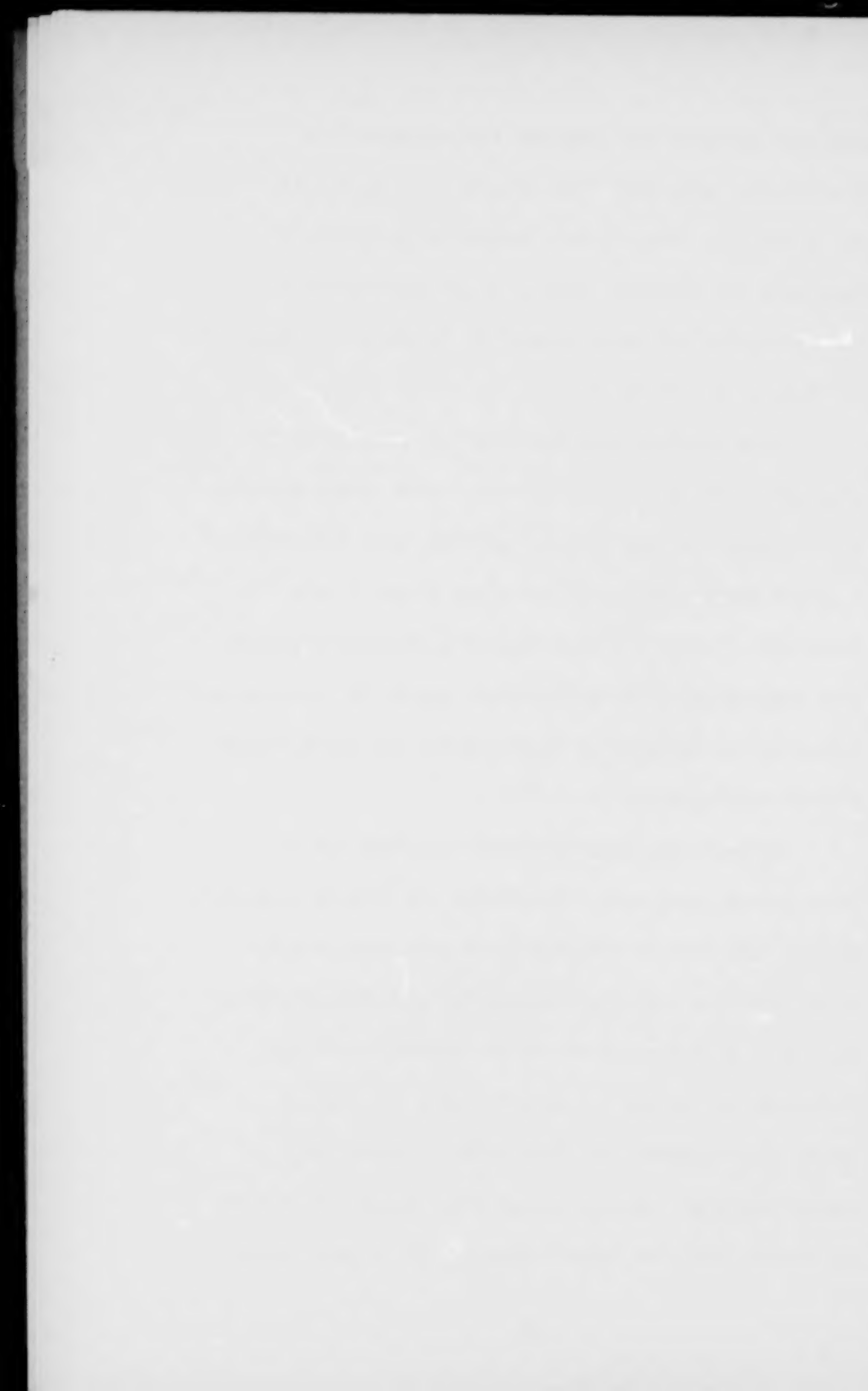
In its Memorandum Opinion, the District Court first concluded that Plaintiffs' claims against the Commonwealth were barred by the Eleventh Amendment to the Constitution of the United States. (App. B to Pet., p. 14(a)). Continuing, the Court found Plaintiffs' claims against all individual State Officers to be barred by the doctrine of qualified immunity, insofar as such

² Appendixes to Petition hereinafter referenced as "App. to Pet."

claims sought to impose retrospective liability against the state. (Id.) In so holding, the Court noted Plaintiff's failure to allege individual wrongdoing on the part of any named defendant. (App. B to Pet., p. 17(a)).

Addressing the merits of Plaintiffs' claims, the District Court held that Plaintiffs had failed to establish any constitutional deprivations arising from their layoffs. (Id.) The Court's determination was based upon Plaintiffs' lack of protected liberty or property interests in continued state employment.

Rejecting Plaintiffs' claims of a protected property interest in state employment, the Court emphasized the statutory distinction between layoffs and discharges. While a discharge must be based upon a finding of cause, layoffs may be based upon any number of factors, including departmental reorganization, lack of funds or work, or the abolishment of a position.

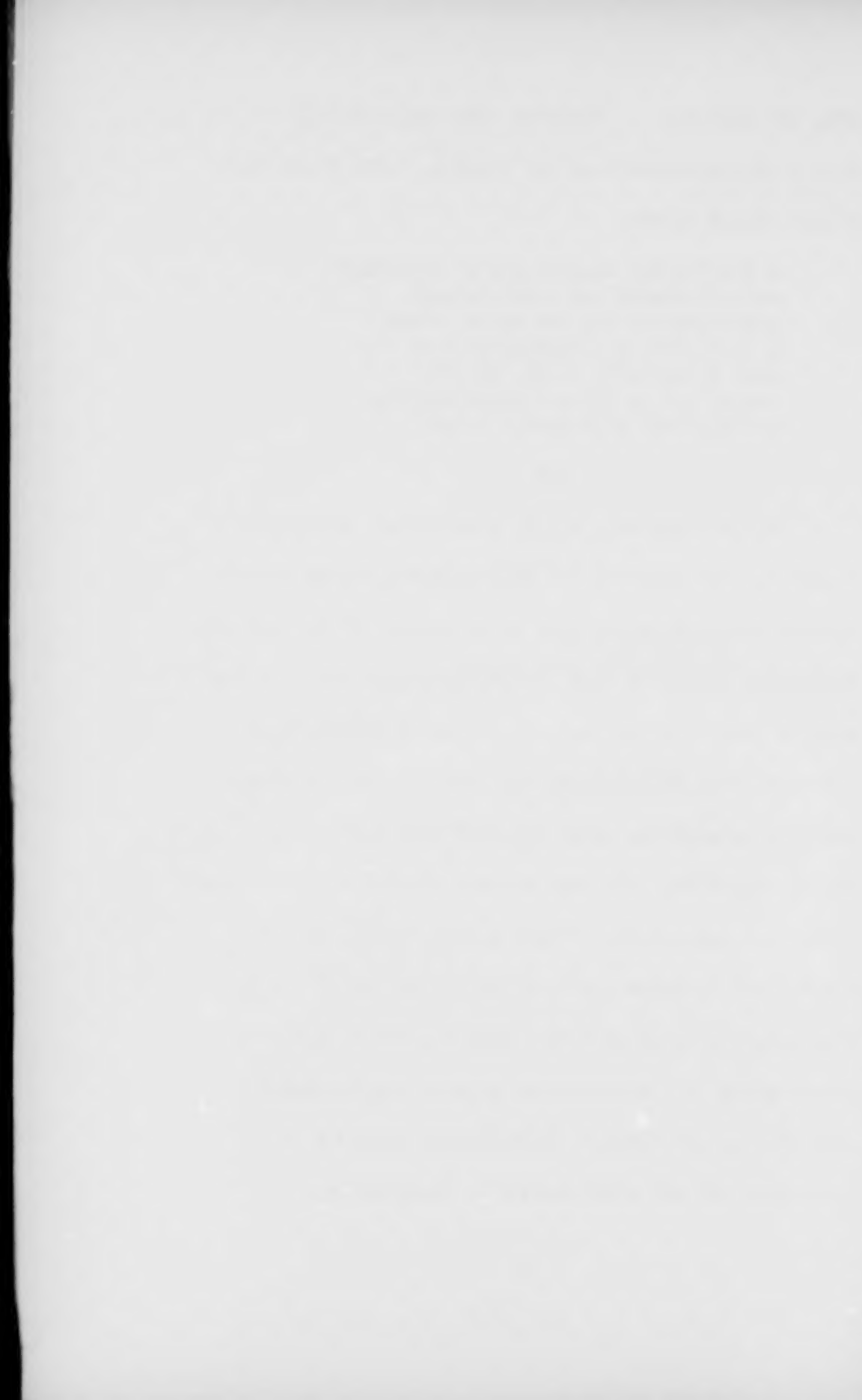


KRS 18.210(14). Absent the necessity for a determination of cause, the District Court held that:

A Kentucky employee's claimed entitlement to continued employment is no more than a unilateral expectation and does not rise to the level of a constitutionally protected property right.

Id.

With respect to Plaintiffs' alleged liberty interests in employment, the Court again relied upon the statutory distinction between layoffs and terminations for cause. While the latter may involve publication of charges affecting an individual's community standing and future employment, mere layoffs, it was held, could not stigmatize an employee, "let alone rise to the level of a deprivation of liberty." (Id.) Finding no protected liberty or property interests in continued state employment, the District Court dismissed Counts I through IV of Plaintiff's Complaint.



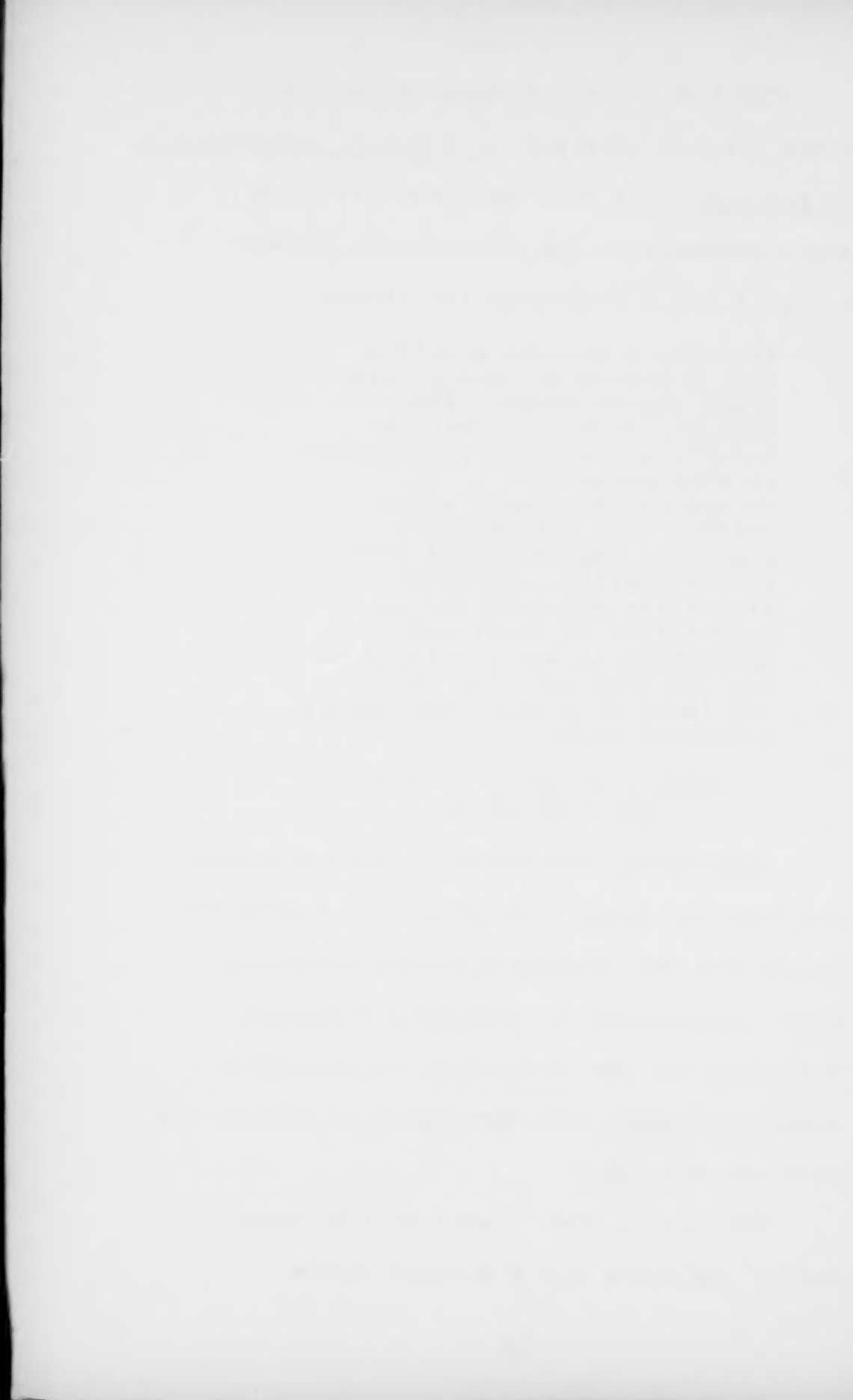
The U.S. Court of Appeals for the Sixth Circuit affirmed in Riggs v. Commonwealth of Kentucky, 734 F.2d 262 (6th Cir. 1984), again emphasizing the distinction between a layoff and a discharge for cause:

Kentucky's statute provides that a discharge cannot take place absent cause. The Kentucky statute governing layoffs contains no requirement to show cause. . . . It is the cause element which confers upon the property right the imprimatur of constitutionality. Although plaintiffs may have had an expectation of continued employment it was a unilateral one and does not rise to the level of a constitutionally protected right.

(App. A to Pet., p. 5(a))
734 F.2d at 265.

Continuing, the Sixth Circuit affirmed the District Court's holding that Plaintiffs' claims did not involve a stigma affecting their reputations or community standing. Therefore, it was concluded, no protected liberty interest was implicated in Plaintiffs' terminations (Id.)

The issues thus framed by the lower courts' opinions are discussed below.



SUMMARY OF ARGUMENT

This case involves no issue sufficient to justify the granting of the writ requested. The Courts below correctly found that Petitioners had no constitutionally protected property or liberty interest in their state employment that could be affected by their being laid off. This case involves only issues of state law and is beyond the jurisdiction of a federal court, especially since there has been no claim of wrongdoing on the part of any Defendant. Petitioners would have the federal courts become review boards for state personnel decisions, a desire that has long been rejected. They also overlook the well settled distinction between a layoff and a discharge for cause.

The Defendants, all high-ranking state officials, possessed qualified immunity. That qualified immunity can only be overcome by showing that even if any federally protected right of Plaintiffs has been violated, that right was clearly established

at the time of official action. No such showing was or can be made here.

REASONS FOR DENYING THE WRIT

I. NO PROPERTY OR LIBERTY RIGHT IS PRESENT IN THIS CASE.

The Petition completely ignores the fact that Petitioners do not possess either property or liberty interests which are subject to protection under the Fourteenth Amendment to the Federal Constitution. This was the prime ground upon which the District Court granted Defendants' motion for judgment and upon which the Court of Appeals affirmed. Petitioners blandly assume that they have either a protected property or liberty interest. However, no facts or law are set out to support this assumption.

A. Petitioners Have No Protected Property Interest in State Employment.

The reliance placed by Petitioners upon Board of Regents v. Roth, 408 U.S. 564 (1972), is misplaced for that case is firm support for the result below. That

opinion demonstrates that property interests which are subject to constitutional protection do not exist in a vacuum. When dealing with state employees, such interests are generally based upon state law and it is that law which determines the nature of the employees' interest. In Roth, the court declared:

To have a property interest in a benefit, a person [must enjoy] . . . a legitimate claim of entitlement to it.

. . . [Such] interests . . . are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law -- rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.

408 U.S. 564 at 577 (1972)
(footnote omitted).

This view that state law, not the constitution, is the basis of a protected interest was also asserted in Perry v. Sindermann, 408 U.S. 593 (1972), where it was said:

7. We do not now hold that the respondent has any such legitimate claim of entitlement to job tenure. For '[p]roperty interests . . . are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law. . . .' Board of Regents v. Roth, supra, at 577, 33 L.Ed.2d at 561. If it is the law of Texas that a teacher in the respondent's position has no contractual or other claim to job tenure, the respondent's claim would be defeated.

408 U.S. at 602
(emphasis supplied).

See also, the concurring opinion of Burger, C.J. at 408 U.S. 603.

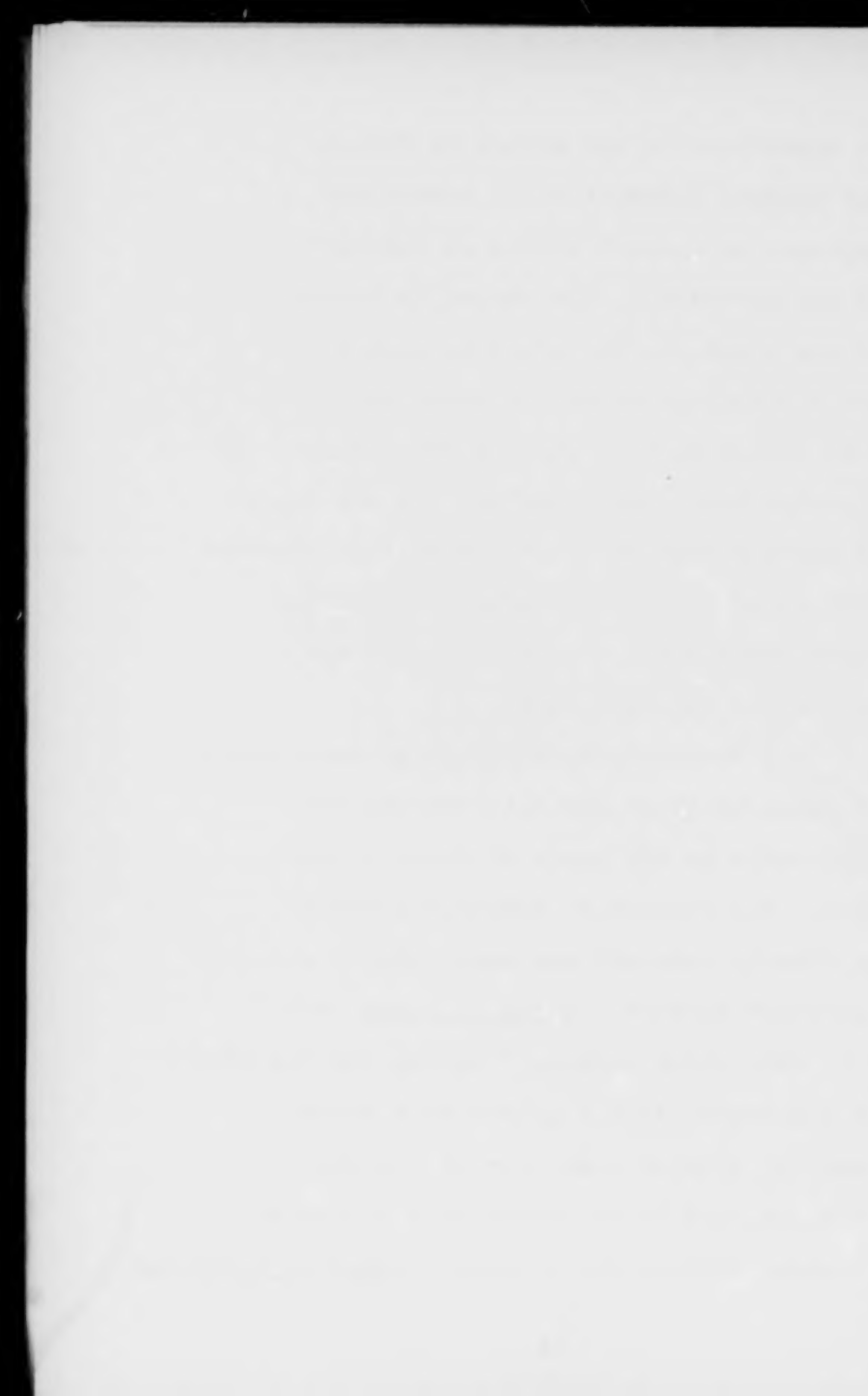
Here it is clear that one's employment by the Commonwealth of Kentucky is specifically made subject to layoff for lack of funds.

KRS 18.210(4) and 101 KAR:120.

The claims of Petitioners as set out in the Complaint are based entirely on allegations of failure to follow state procedure. There are no claims set out in the Complaint or in papers submitted

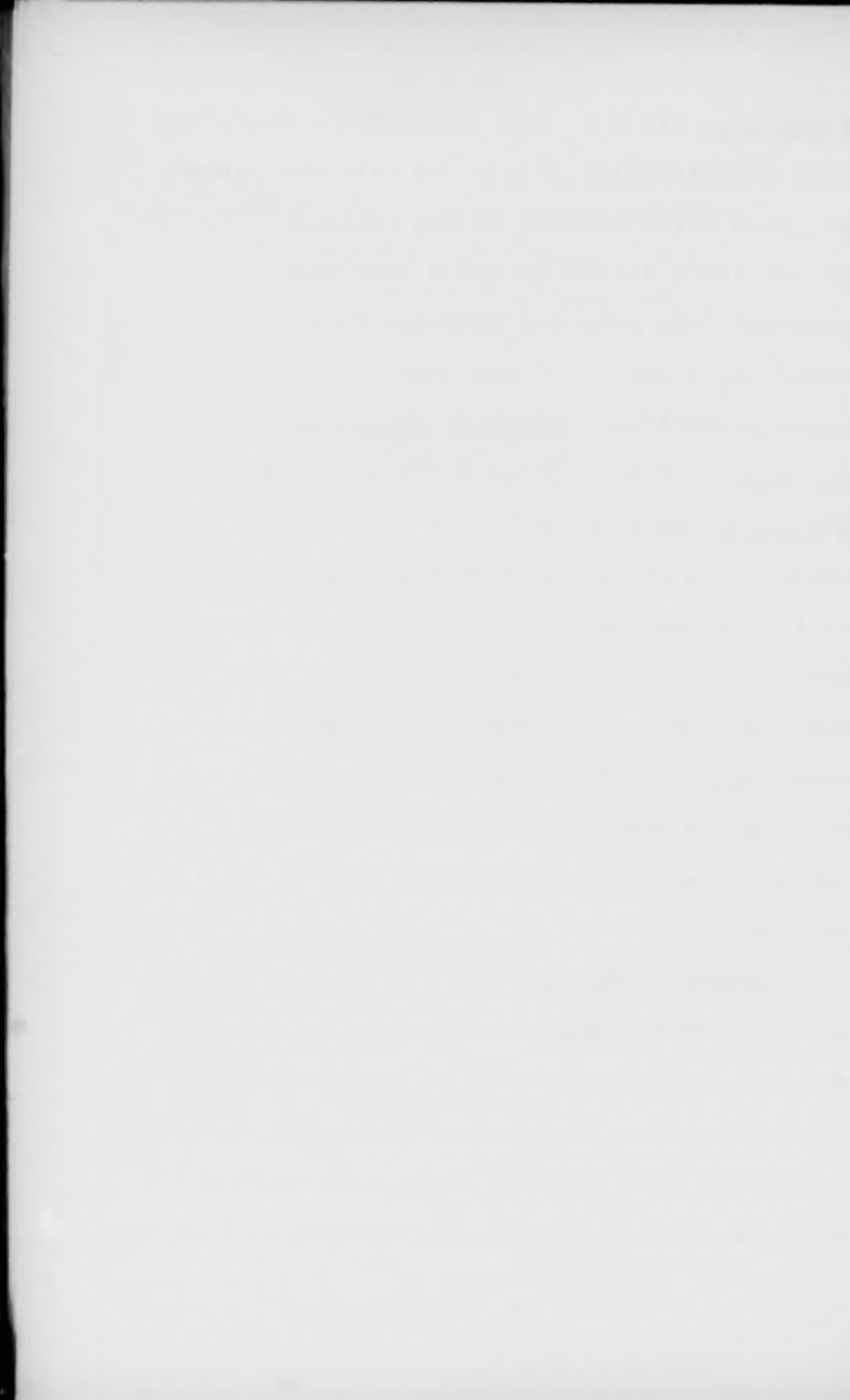
in opposition to the motion to dismiss and summary judgment which assert any improper or suspect action on the part of any Defendant. The record is barren of any claim in the nature of race or sex discrimination or the impairment of free speech or free association. The District Court specifically, and the Court of Appeals impliedly, relied on this admitted absence of invidious conduct in reaching their conclusions that Petitioners did not have a federal claim.

The authorities relied on by Petitioners at pages 14-19 of the Petition are not applicable to the state of facts present here. All involve an admitted property or liberty interest and some type of arguable invidious conduct. Vitek v. Jones, 445 U.S. 480, 490-1 (1980), involved the transfer of a prisoner from a prison to a mental hospital without some type of hearing. This was held to be denial of a protected interest without due process. Logan v. Zimmerman



Brush Co., 455 U.S. 422, 432 (1982), dealt with a termination of a state fair employment practice claim because of the failure of the state itself to act within the required time period. This was held to result in a denial of due process and equal protection. Board of Education v. Vail, __ U.S. __, 104 S.Ct. 2144 (1984), affirming 706 F.2d 1435 (7th Cir. 1983), concerned a claim for breach of contract without a hearing. Plaintiff had a contract with the board for a one year period with assurance of renewal for another year. Under Perry v. Sinderman, this was held to create a common law right that could not be terminated without some form of review.

Hudson v. Palmer, __ U.S. __, 52 U.S.L.W. 5052 (1984), and Parratt v. Taylor, 451 U.S. 527 (1981), give no assistance to Petitioners. Both cases involved prisoners' rights and both held for defendants because adequate state remedies were available.

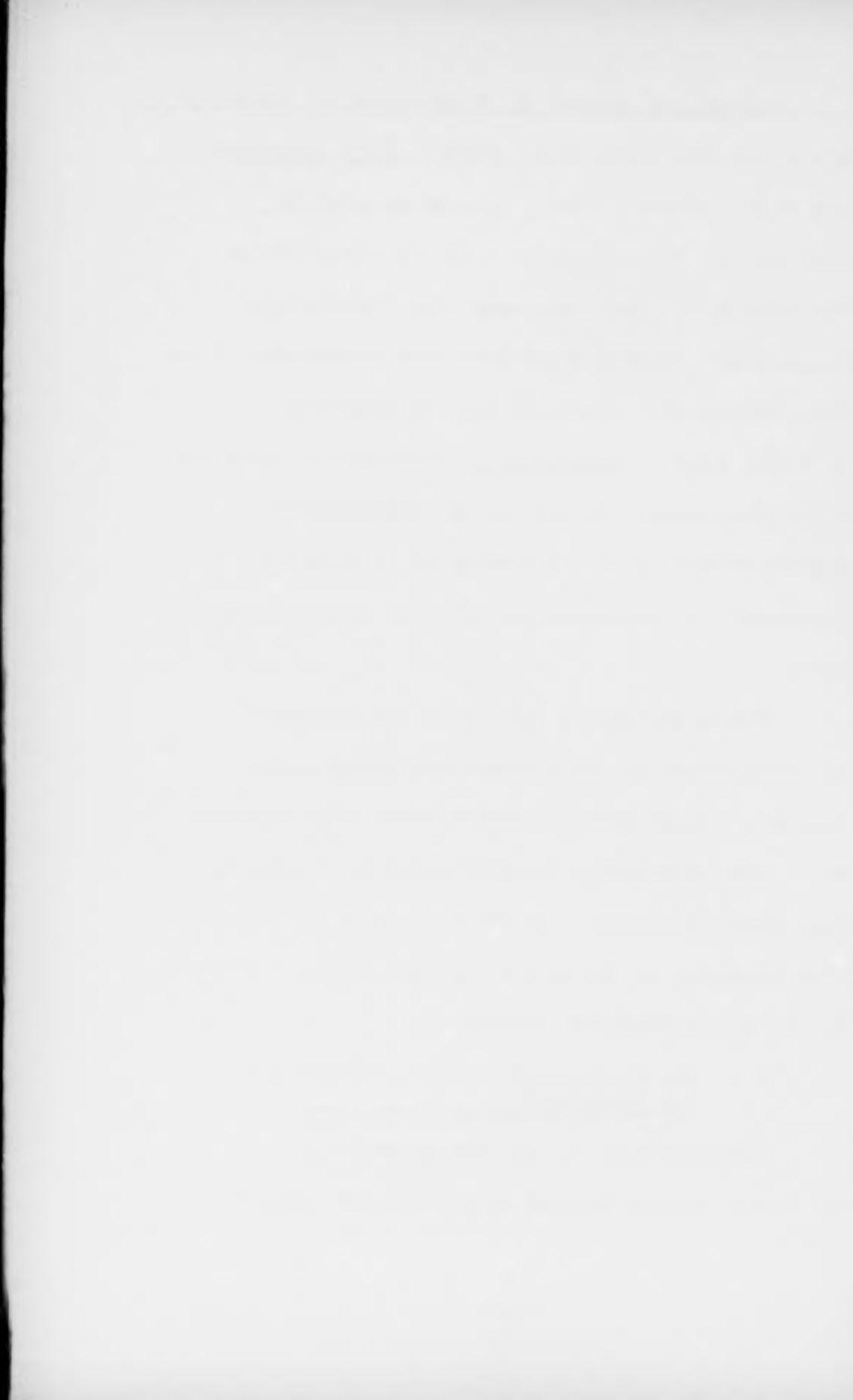


Cleveland Board of Education v. Loudermill,
721 F.2d 550 (6th Cir. 1983), cert granted
104 S.Ct. 2384 (1984), gives no aid or
comfort to Petitioners. It is clear from
the facts of the case and the "Questions
Presented" in the Petition and Cross-Petition
for Certiorari that it has no bearing
on this case. Loudermill involves a termina-
tion for cause (lying on an employment
application) and a finding of a property
interest in employment. It is not relevant
here.

There being be no facts to support
an assurance of continued employment but,
rather, clear-cut evidence that the employ-
ment was expressly conditioned by Kentucky
law which permits layoff for lack of funds,
the finding of no protected property interest
is in all respects correct.

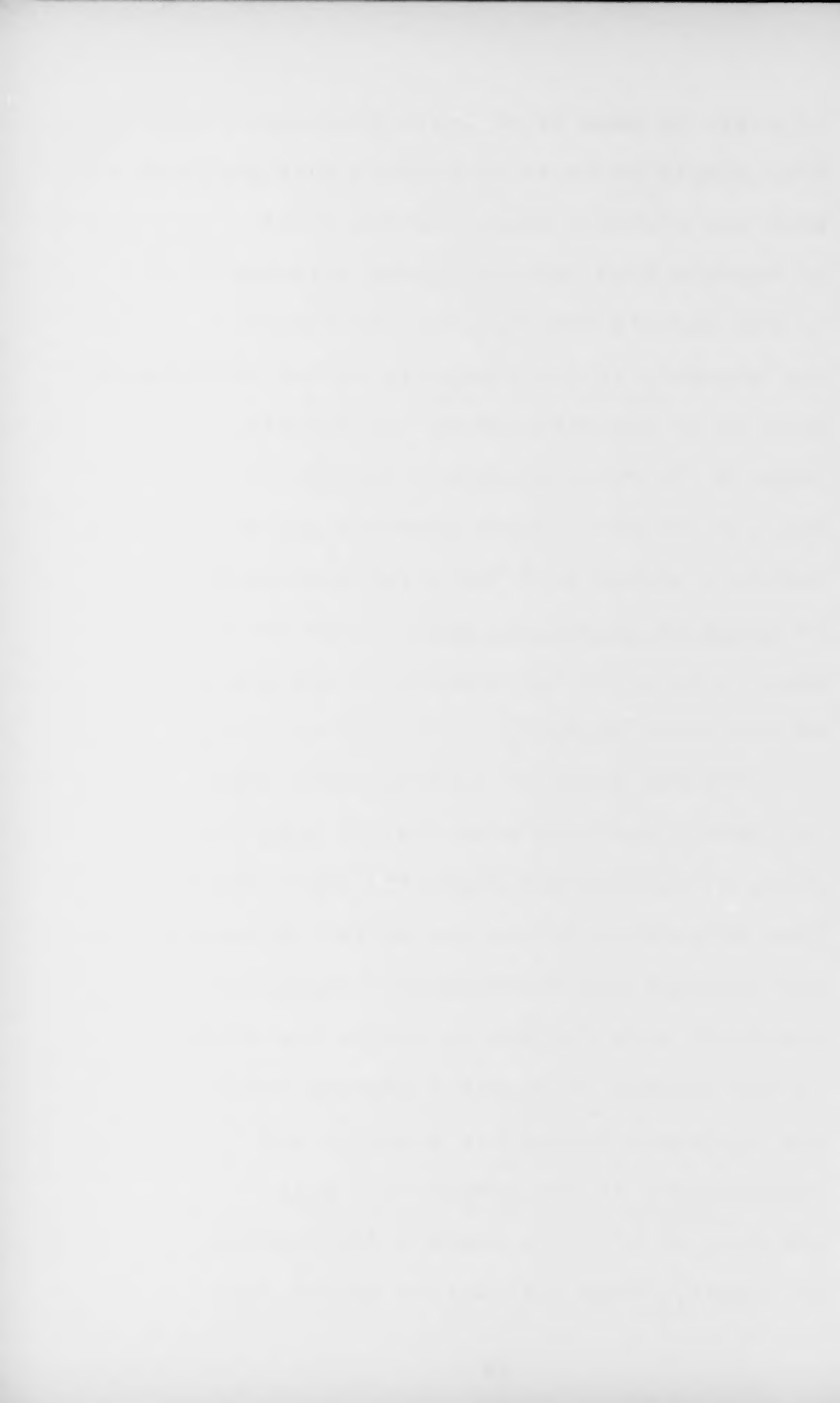
B. No Protected Liberty Interest
is Involved.

Petitioners raise the possibility
of their being denied a protected liberty



interest at page 14 of their Petition. They supply no facts to support this position. Both the District Court and the Court of Appeals held that no stigma attached to the layoffs and that the reputation and standing in the community of the Petitioners were in no way affected by the layoffs (App. B. to Pet., p. 21(a); App. A. to Pet., p. 11(a)). These holdings are in complete accord with the views expressed in Board of Regents v. Roth. This is especially so in the absence of any claim of invidious conduct.

The Petitioners' liberty claim here is almost identical with that in Roth where it was claimed Plaintiff might be less attractive in the job market because his contract was not renewed. However, the Court held failure to rehire Plaintiff in the absence of specific charges could not seriously damage his standing and associations in the community. Roth, 408 U.S. at 573. To reach a deprivation of liberty, some affirmative action such



as foreclosure of other employment opportunities is required. See generally, Developments in the Law - Public Employment, 97 Harvard L.Rev. 1611 at 1780-1794 (1984). No such activity is present here. In fact, the reverse is true and many rights are made available to laid off employees (App. A to Pet., pp. 5(a)-6(a)).

The entire case of Petitioners is based upon the mistaken view that a layoff for lack of funds or work is the same as a discharge for cause. The difference between discharge and layoff was clearly set out in Fishgold v. Sullivan Dry Dock & Repair Corp., 328 U.S. 275 (1946), where the court said:

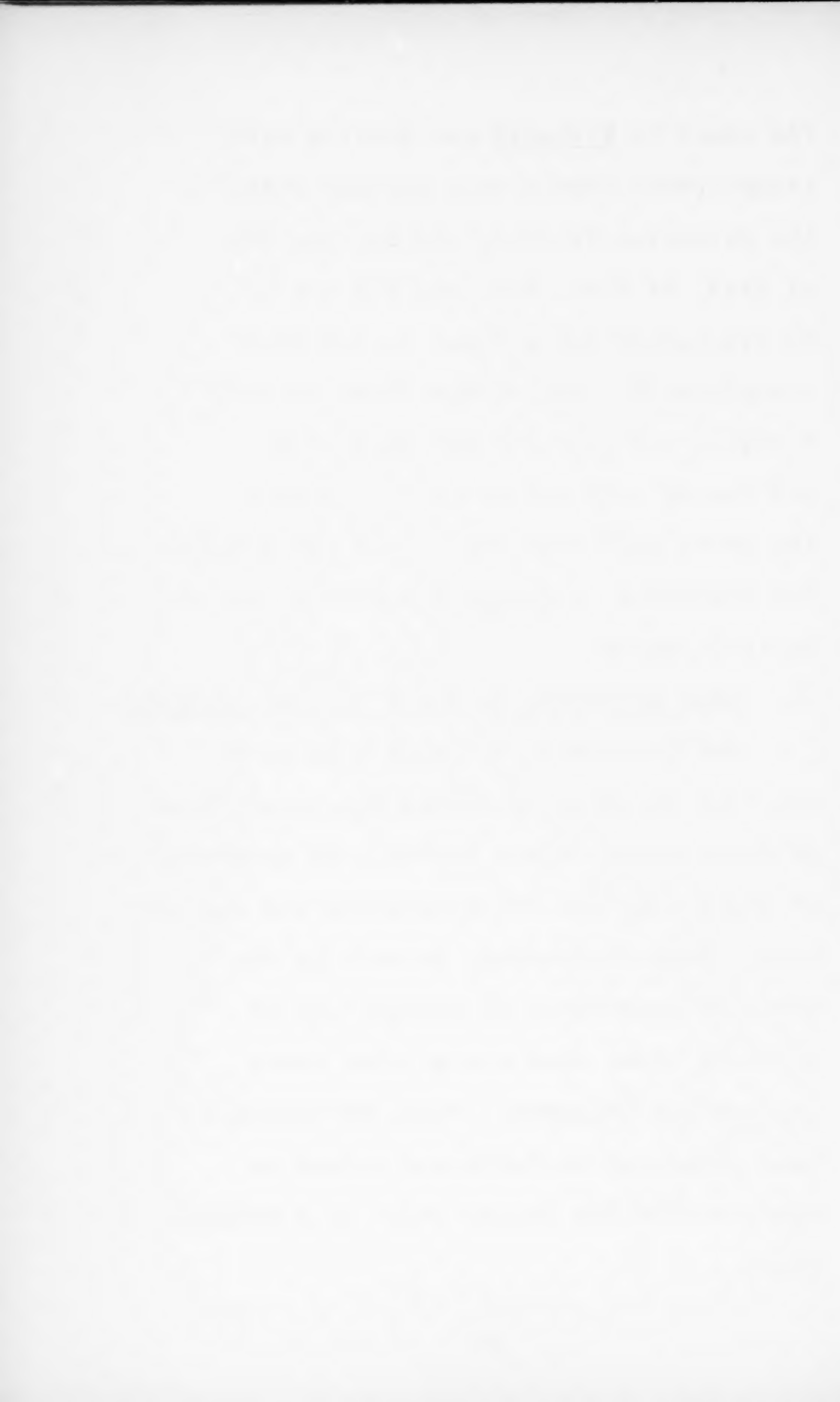
Discharge normally means termination of the employment relationship or loss of a position. In common parlance and in industrial parlance a person who has been laid off by operation of a seniority system and put on a waiting list for reassignment would hardly be considered as having been 'discharged.'

328 U.S. at 286-7
(footnotes omitted).

The court in Fishgold was dealing with reemployment rights of a veteran under the Selective Training and Service Act of 1940, 54 Stat. 885, who was not to be discharged for a fixed period after reemployment. During the fixed period, Fishgold was laid off for lack of work and having less seniority than others. The court held that the layoff was proper. The reasoning in Fishgold supports the decision below.

II. ONLY QUESTIONS OF STATE LAW ARE INVOLVED.

The discussion at pages 8-12 of the Petition in effect concedes that the claims of Petitioners relate entirely to questions of state law, its interpretation and application. That discussion, as well as the Complaint, contains no allegations of anything other than claims that state law was not followed. Thus, Petitioners have presented no facts and raised no issue within the jurisdiction of a federal court.



The Complaint on its face seeks both legal and equitable relief against the state (App. A, pp. 1 - 16). It does not allege any invidious acts by any state official. The claims of petitioners are barred by the Eleventh Amendment to the Constitution. Ford Motor Company v. Department of Treasury, 323 U.S. 459 (1945). The entire case of Petitioners is based on asserted failures to follow state law. The recent opinion in Pennhurst State School & Hospital v. Halderman, ___ U.S. ___, 52 U.S.L.W. 4155 (1984), establishes that the relief sought here is beyond the jurisdiction of a federal court. It was there declared:

A federal court's grant of relief against state officials on the basis of state law, whether prospective or retro-active, does not vindicate the supreme authority of federal law. On the contrary, it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to

state law. Such a result conflicts directly with the principles of federalism that underlie the Eleventh Amendment.

52 U.S.L.W. at 4159.

What Petitioners seek is to turn the federal courts into a personnel review system for state agencies. This desire was specifically rejected in Bishop v. Wood, 426 U.S. 341, 349-50 (1976). Pennhurst gives additional strength to the reasoning of Bishop v. Wood and makes clear that this case is not within federal jurisdiction.

III. DEFENDANTS' QUALIFIED IMMUNITY BARS THE CLAIM OF PETITIONERS

Petitioners have submitted nothing to indicate that their rights which they claim have been violated were clearly established at the time of the alleged violation. Two courts have held in this case that Petitioners had no rights subject to constitutional protection. It is obvious that whatever rights Petitioner may have, they could not be said to have been clearly

established at the time this case was instituted. In this situation, Davis v. Scherer, ___ U.S. ___, 52 U.S.L.W. 4956 (1984), holds that the qualified immunity of state officials bars the relief here requested.

All but the judgment proof would be deterred from accepting senior positions in state government if state officials who seek to meet the state constitutional requirement of a balanced budget are personally liable for heavy damages if they, in the course of their duties, adopt various methods to reduce state employment and expense which may violate state law. Such a holding is directly counter to that of Davis v. Scherer. The procedure followed by the District Court in this case which as promptly as possible led to final judgment is in accord with that which was approved in Davis v. Scherer where the court said:

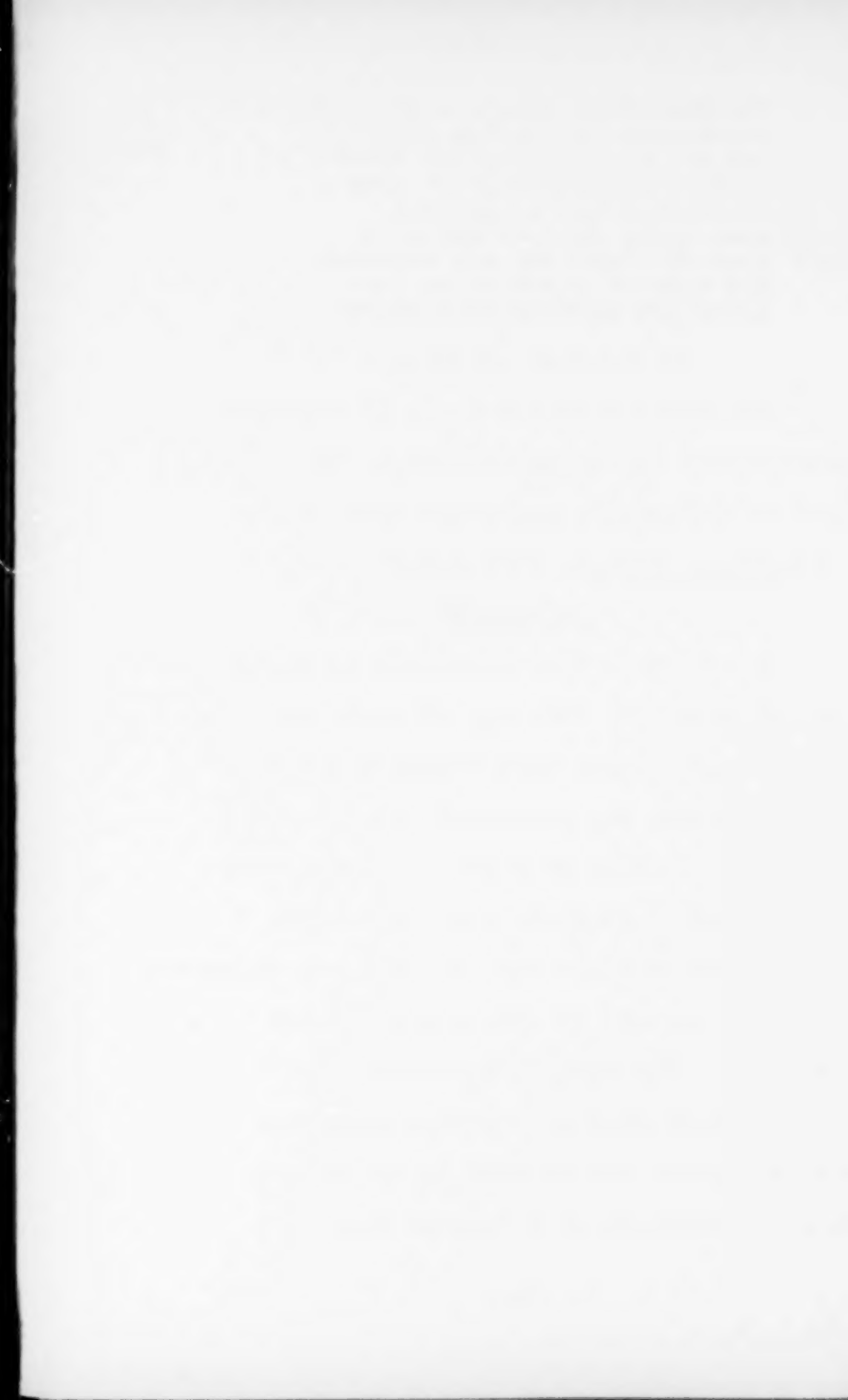
The qualified immunity doctrine recognizes that officials can act without fear of harassing litigation only if they reasonably can anticipate when their conduct may give rise to liability for damages and only if unjustified lawsuits are quickly terminated.

52 U.S.L.W. at 4959.

The absence of any claim of improper activity or invidious misconduct on the part of Defendants makes the application of Davis v. Scherer most compelling.

CONCLUSION

Petitioners have presented no facts to indicate: (1) that any of their constitutional rights have been transgressed or that they had any protected property or liberty interests at stake; (2) that they cannot obtain adequate redress outside the federal system; and (3) that any Defendant acted in any way to lose his qualified immunity. The case of Petitioners is nothing more than an ordinary personnel review matter and as such is not within the jurisdiction of a federal court.



For these reasons, as detailed herein,
the Petition for Writ of Certiorari should
in all respects be denied.

Respectfully submitted,

DONALD H. BALLEISEN
PATRICK A. NEPUTE
DOROTHY M. PITT

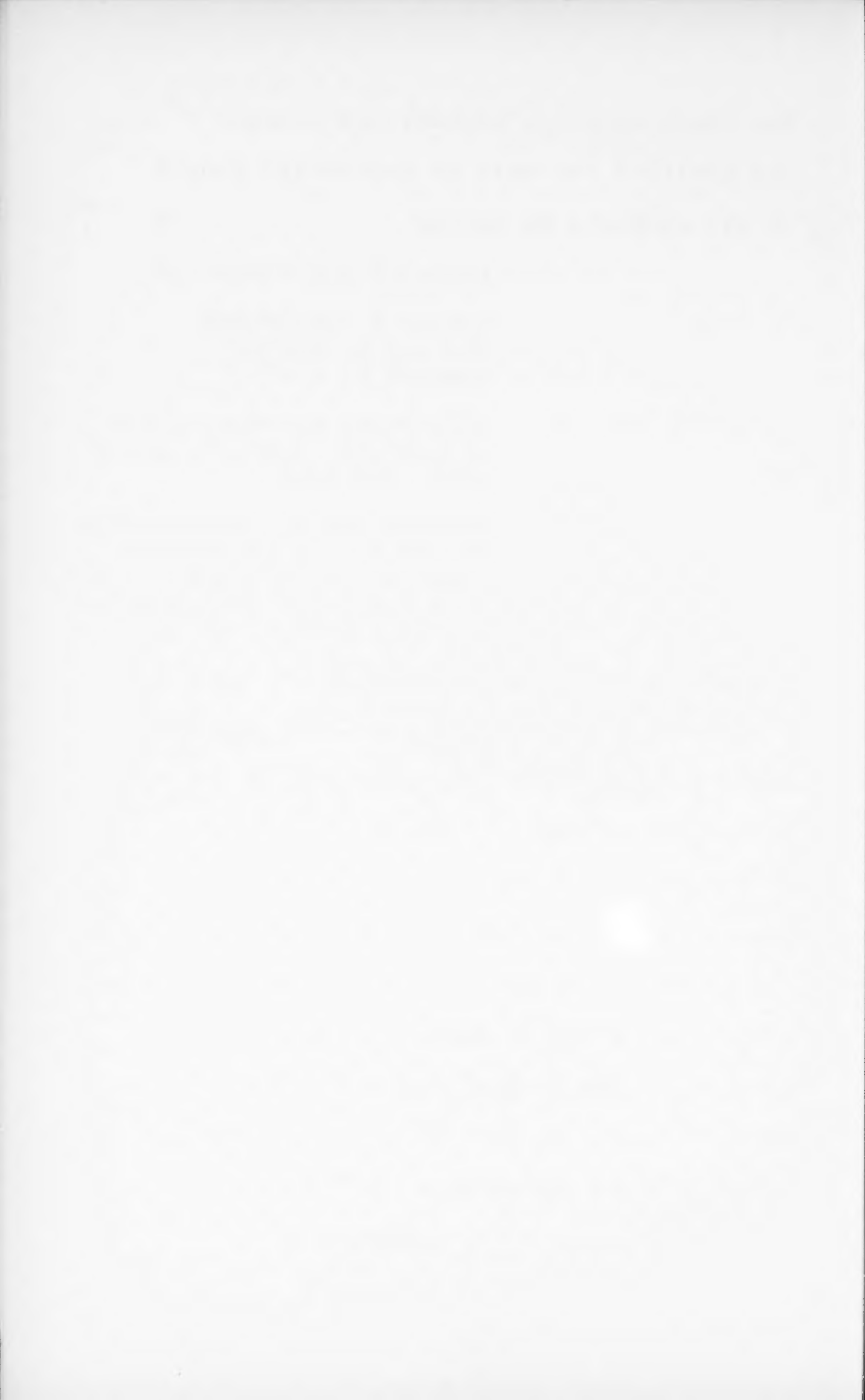
3300 First National Tower
Louisville, Kentucky 40202
(502) 589-4200

COUNSEL FOR ALL RESPONDENTS
EXCEPT PHILIP TALIAFERRO,
LIBBY WALTHALL, JAMES S. WAY,
JACK RAZOR AND JOHN MCNEILL

GREENEBAUM DOLL & McDONALD
Of Counsel

EDITOR'S NOTE

PAGES 1 thru 15 WERE POOR
HARD COPY AT THE TIME OF FILMING.
IF AND WHEN A BETTER COPY CAN BE
OBTAINED, A NEW FICHE WILL BE
ISSUED.



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE, KENTUCKY

SHELBY E. RIGGS,
SARAH S. HAMMONDS,
MORRISON L. COOKE,
JACK G. GREENE,
HARVIN COLE,
W. JANE JAGGERS,
EDWARD SPENCER,
LLOYD R. RYLES, SR.,
LOIS G. SMITH,
KYLE W. BALL,
DORIS S. PEARMAN,
THOMAS L. JASPER,
RALPH MURPHY,
MARJORIE J. RALSTON,
PAUL E. CAMPLIN,
RITA M. McMAHON,
BILLY T. FURNISH,
RUTH M. MAYEUX,
ANN M. PEEB,
CATHERINE A. HAYDEN,
DAVIS L. JACKSON, Sr.,
G. L. JACKSON,
EARL B. HOWARD,
PHYLLIS J. EGGER,
MARY H. PETER,
JAMES M. FULLER, JR.,
GLENN H. HOWELL,
F. GAYLE HAVENS,
JOHN J. THOMAS,
PATRICIA A. TERRY,
MARTHA R. BROWN,
JAMES M. HUFFINES, SR.,
W. KENNETH KEOWN,
DOROTHY I. HOSKINS,
WILLIAM G. CARVER, JR.,
GARY WOOLDRIDGE,
JACK D. WALKER,
CHARLES E. DAVIS,
KELLY M. DANIELS,
JAMES C. BROWN,
LARRY V. SHOEMAKER,
ALBERT F. SPERATH,

On behalf of themselves and all
others similarly situated.

PLAINTIFFS

vs.

COMMONWEALTH OF KENTUCKY
State Capitol
Frankfort, Kentucky 40601

SERVE:
Steven L. Beshear
Attorney General
Commonwealth of Kentucky
State Capitol Building
Frankfort, Kentucky 40601

and

JOHN Y. BROWN, JR., Governor
Commonwealth of Kentucky
State Capitol
Frankfort, Kentucky 40601

and

CIVIL ACTION NO.

COMPLAINT 85-0.544-LB)



LEE MAYNARD, Commissioner
Kentucky Department of Personnel
and Secretary
Kentucky Personnel Board
Capitol Annex
Frankfort, Kentucky 40601

and

PHILLIP TALIAFERRO, Chairman
Kentucky Personnel Board
Capitol Annex
Frankfort, Kentucky 40601

and

LIBBY WALTHALL, Vice-Chairman
Kentucky Personnel Board
Capitol Annex
Frankfort, Kentucky 40601

and

JAMES S. WAY, Member
Kentucky Personnel Board
Capitol Annex
Frankfort, Kentucky 40601

and

JACK RAZOR, Member
Kentucky Personnel Board
Capitol Annex
Frankfort, Kentucky 40601

and

JOHN W. McNEILL, Member
Kentucky Personnel Board
Capitol Annex
Frankfort, Kentucky 40601

and

W. GRADY STUMBO, Secretary
Kentucky Department for Human Resources
DHR Building
Frankfort, Kentucky 40621

and

BRUCE LUNSFORD, Secretary
Kentucky Commerce Cabinet
Capital Plaza Tower
Frankfort, Kentucky 40601

and

FRANK R. METTS, Secretary
Kentucky Department of Transportation
Frankfort, Kentucky 40622

and

JACKIE SWIGART, Secretary
Kentucky Department for Natural Resources
and Environmental Protection
Capital Plaza Office Tower
Frankfort, Kentucky 40601

and

JOHN R. GROVES, JR., Commissioner
Kentucky Department of Housing,
Buildings and Construction
U.S. 127 South
Frankfort, Kentucky 40601

and

ROBERT M. ALLPHIN, Commissioner
Kentucky Department of Revenue
Frankfort, Kentucky 40601

and

GEORGE L. ATKINS, Secretary
Kentucky Department of Finance
New Capitol Annex
Frankfort, Kentucky 40601

and

DON MILLS, Secretary
Kentucky Education and Humanities Cabinet
Capital Plaza Tower
Frankfort, Kentucky 40601

and

LOIS MATEUS, Commissioner
Kentucky Department of the Arts
2200 Capital Plaza Tower
Frankfort, Kentucky 40601

and

JAMES A. NELSON, State Librarian
Kentucky Department of Library and Archives
Frankfort, Kentucky 40602

and

RAYMOND BARBER,
Superintendent of Public Instruction
Kentucky Department of Education
Capital Plaza Tower
Frankfort, Kentucky 40601

and

ROGER PETERMAN, Executive Director
Kentucky Development Finance Authority
Suite 300
State National Bank Building
Frankfort, Kentucky 40601

and

NEIL J. WELCH, Secretary
Kentucky Department of Justice
Frankfort, Kentucky 40601

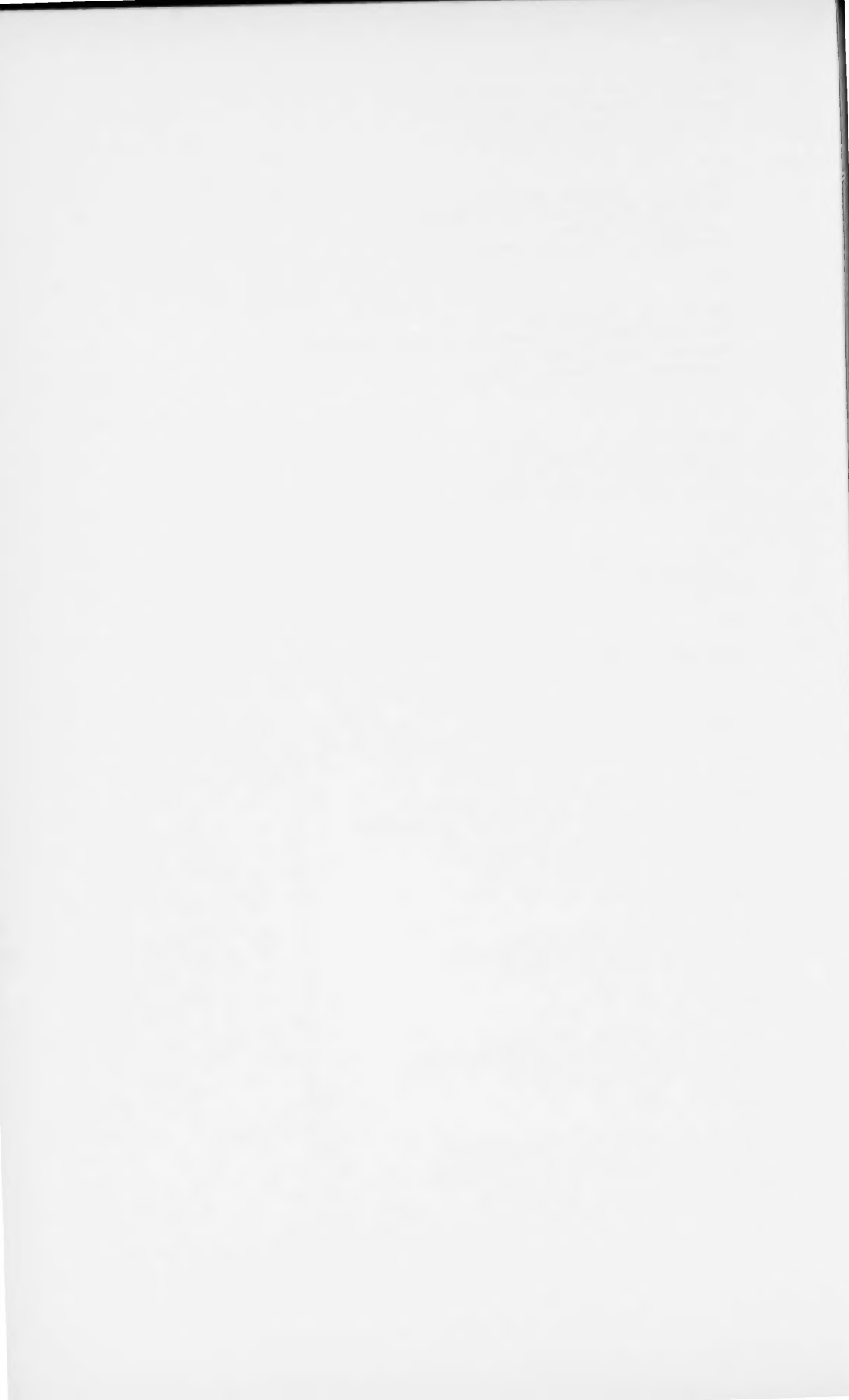
and

GEORGE W. WILSON, Secretary
Kentucky Department of Corrections
Frankfort, Kentucky 40601

and

DANIEL D. BRISCOE, Commissioner
Kentucky Department of Insurance
P. O. Box 571, 151 Elkhorn Court
Frankfort, Kentucky 40602

and



RICHARD W. LEMER, Commissioner
Kentucky Department of Alcoholic
Beverage Control
123 Walnut Street
Frankfort, Kentucky 40601

and

JOSEPH R. BELL, Executive Vice President
Kentucky Fair and Exposition Center
P. O. Box 21179
Louisville, Kentucky 40221

and

BILLY G. WELLMAN, Adjutant General
Kentucky Department of Military Affairs
Frankfort, Kentucky 40601

and

ANDREW "SKIPPER" MARTIN, Commissioner
Kentucky Department of Community and
Regional Development
Capital Plaza Tower
Frankfort, Kentucky 40601

and

GEORGE FISCHEK, Secretary
Kentucky Personnel and Management Cabinet
Capitol Annex
Frankfort, Kentucky 40601

and

MIKE ROBINSON,
Director of Administrative Control
Kentucky Department of Personnel
Frankfort, Kentucky 40601

and

MATTHEW J. AMATO, JR., Director
Division of Personnel Management
Kentucky Department for Human Resources
Frankfort, Kentucky 40621

and

RITA YOUNG, Acting Director
Office of Personnel Management
Division of Personnel
Kentucky Department of Transportation
Frankfort, Kentucky 40622

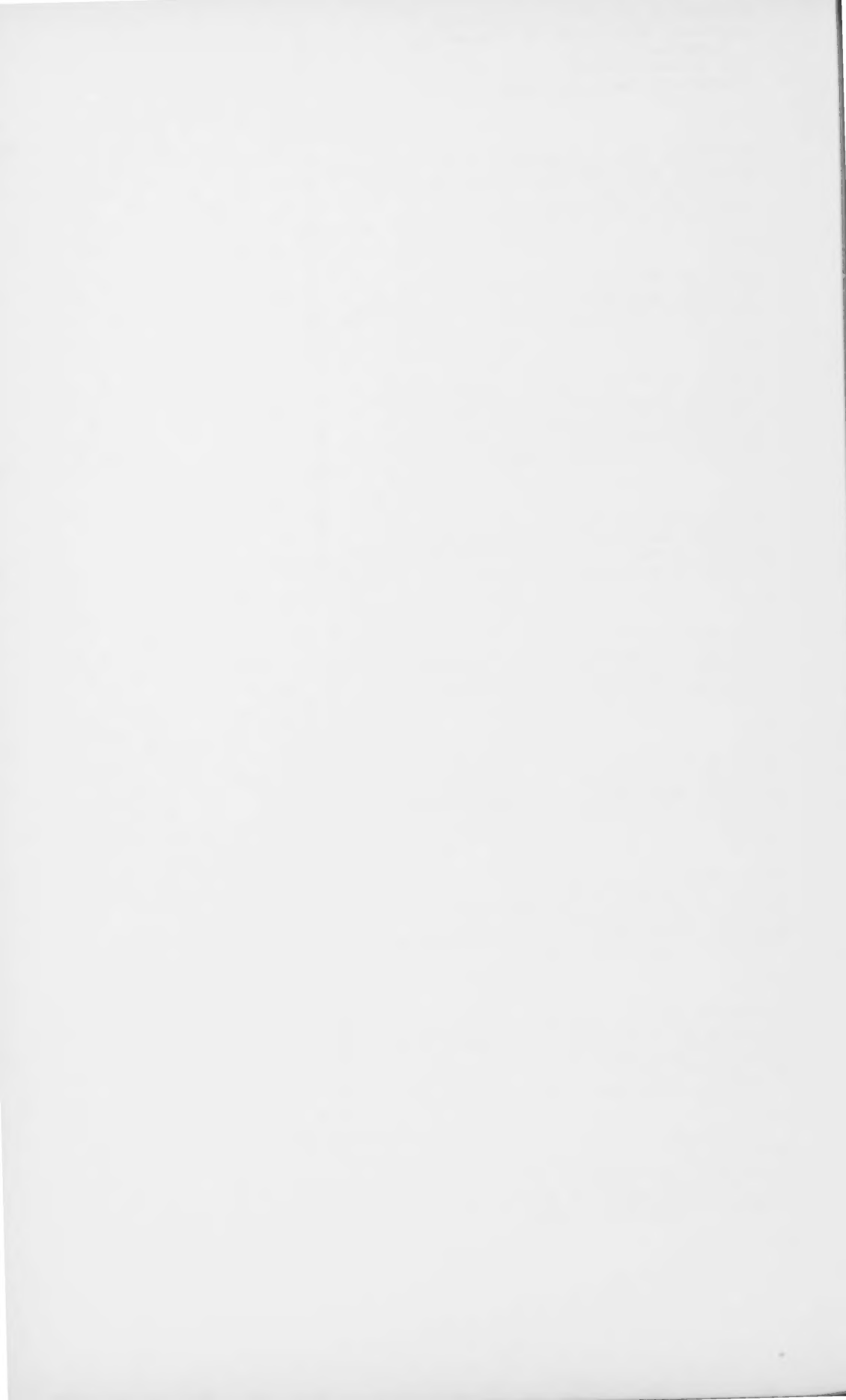
and

ERNEST P. FOWLER, Acting Director
Division of Management Services
Kentucky Department of Finance
New Capitol Annex
Frankfort, Kentucky 40601

and

VERT TAYLOR
Director of Personnel
Kentucky Department of Education
Frankfort, Kentucky 40601

and



Division of Water Quality
Kentucky Department for Natural Resources
and Environmental Protection
Century Plaza
1065 U.S. 127 Bypass South
Frankfort, Kentucky 40601

and

JAMES E. STEWART, Director
Division of Management Services
Kentucky Personnel and Management Cabinet
Capitol Annex
Frankfort, Kentucky 40601

and

WILLARD STANLEY, Commissioner
Kentucky Department of Mines and
Minerals
P. O. Box 680
Lexington, Kentucky 40589

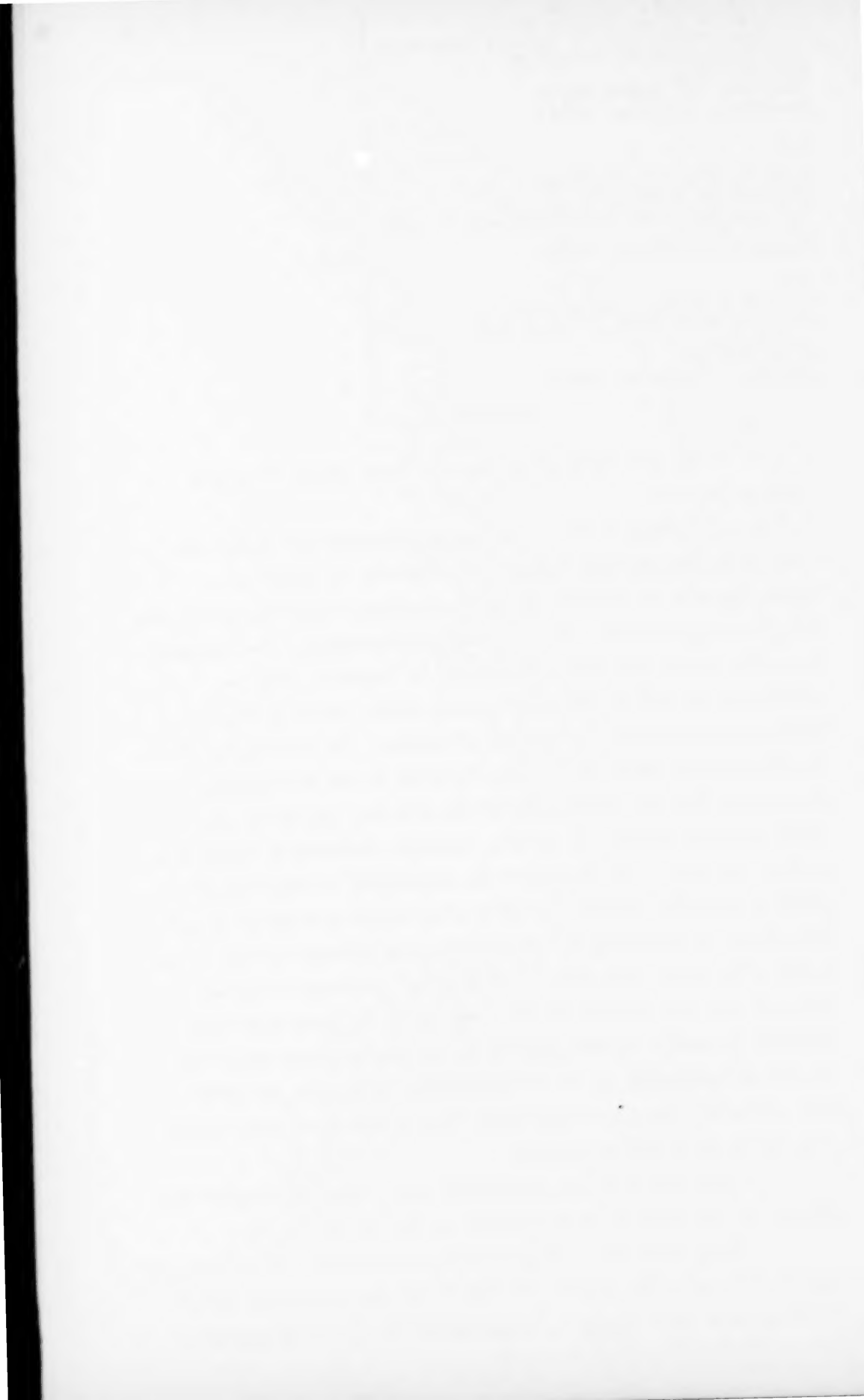
DEFENDANTS

Come the Plaintiffs, and for their cause of action,
state as follows:

1. This is an action for declaratory and injunctive relief and compensatory damages. Plaintiffs on behalf of themselves and all others similarly situated, challenge herein the procedures of the Kentucky Department of Personnel, the Kentucky Personnel Board, and the Commonwealth of Kentucky, and the procedures of each of the named agency Heads, Secretaries, Commissioners and/or other state officials. The procedures in controversy are those which were followed in the development, formulation and implementation of the official lay-off plans in which employee seniority, service records, performance appraisals, conduct and qualifications were not considered in determining the order of lay-off; career employees with status and seniority did not revert to positions in their designated classification in the agency from which they were terminated or adversely affected; agencies did not attempt to place employees in other positions (whether filled or vacant) for which the employee was qualified; and career employees on the re-employment lists were not given full consideration for reemployment before vacancies were filled from the competitive registers.

Such policies and procedures had a disparate impact upon plaintiffs who were between the ages of 40 and 70.

Such practices and procedures contravene, inter alia, KRS 18.210 (14); KRS 18.217; 101 KAR 1:120, Section 2 (2) and (3); Kentucky case law: Avers v. Personnel Board of the Commonwealth



of Kentucky, (Ky. App. 1981) 28 KLS 9 (Petition for Rehearing filed: July 21, 1981); 42 USC Section 1983; 29 USC Section 626 (c); and the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 USC Section 1343 (3); 28 USC Section 1343 (4); the Civil Rights Act 42 USC Section 1983; 29 USC Section 626; 28 USC Section 2201 and 2202; Rules 57 and 65 of the Federal Rules of Civil Procedure; and the doctrine of pendent jurisdiction. The amount in controversy exceeds \$10,000.00 exclusive of interest and costs.

3. This action may be brought in the Western District of Kentucky, pursuant to 28 USC §1391 because the claim arose in this district.

PARTIES

PLAINTIFFS

4. Each of the Plaintiffs is a citizen of the United States of America, a resident of the Commonwealth of Kentucky, a present or former merit system employee of said Commonwealth, and each was placed on an official departmental lay-off plan and adversely effected in said employment; all in violation of the laws of said Commonwealth.

5. Plaintiffs' names, ages, department of State Government in which employed, last position held therein, effective date of lay-off or adverse action and number of years of service with said Commonwealth, are as follows:

A. Shelby E. Riggs, 56, Department of Transportation, January 15, 1980, 26 years.

B. Sarah S. Hammonds, 55, Department for Human Resources, May 15, 1980, 27 years and 6 months.

C. Morrison L. Cooke, 67, Department of Human Resources, June 20, 1980, 27 years and 6 months.

D. Jack G. Greene, 56, Department for Human Resources, June 20, 1980, 23 years and 7 months.

E. Marvin Cole, 55, Department for Human Resources, May 15, 1980, 22 years.

F. E. Jane Jagers, 59, Department for Human Resources, May 15, 1980, 20 years and 6 months.

G. Edward Spencer, 50, Department for Natural Resources and Environmental Protection, June 15, 1980, 19 years and 10 months.

H. Lloyd R. Nyles, 54, Department of Transportation, August 6, 1980, 18 years.

I. Lois G. Smith, 42, Department for Human Resources, May 15, 1980, 17 years 11 months.

J. Kyle W. Ball, 54, Department of Transportation, May 30, 1980, 17 years and 10 months.

K. Doris S. Pearman, 57, Department for Human Resources, May 15, 1980, 17 years and 9 months.

L. Thomas L. Jasper, 57, Department of Revenue, March 31, 1980, 17 years and 6 months.

M. Ralph Murphy, 56, Department of Transportation, July 15, 1980, 17 years and 6 months.

N. Marjorie J. Ralston, 41, Department of Library and Archives, August 15, 1980, 17 years.

O. Paul E. Camplin, 59, Department of Tourism, March 6, 1980, 17 years.

P. Rita M. McMahon, 57, Department for Human Resources, June 20, 1980, 16 years and 10 months.

Q. Billy T. Furnish, 51, Department of Tourism, March 6, 1980, 16 years and 7 months.

R. Ruth M. Mayeux, 34, Department for Local Government, September 15, 1980, 15 years and 4 months.

S. Ann M. Peel, 49, Department of Commerce, January 4, 1980, 15 years.

T. Catherine A. Hayden, 57, Department of Housing, Buildings and Construction, April 30, 1980, 13 years and 11 months.

U. Davis L. Jackson, Sr., 55, Department of Transportation, June 16, 1980, 13 years and 5 months.

V. G. L. Jackson, 33, Department for Human Resources, May 16, 1980, 12 years and 7 months.

W. Earl B. Howard, 50, Department of Transportation, May 31, 1980, 12 years and 6 months.

X. Phyllis J. Eggen, 41, Department of Transportation, September 19, 1980, 12 years and 6 months.

Y. Mary H. Peter, 38, Department for Human Resources, May 15, 1980, 11 years and 11 months.

Z. James M. Fuller, Jr., 39, Department of Finance, August 15, 1980, 11 years.

AA. Glenn H. Howell, 57, Department of Housing, Buildings and Construction, April 30, 1980, 11 years.

BB. F. Gayle Havens, 40, Department of Transportation, December 31, 1980, 11 years.

CC. John J. Thomas, 49, Department of Housing, Buildings and Construction, April 30, 1980, 9 years and 6 months.

DD. Patricia A. Terry, 30, Department for Human Resources, May 15, 1980, 8 years and 8 months.

EE. Martha R. Brown, 33, Department for Human Resources, May 15, 1980, 8 years and 4 months.

FF. James M. Huffines, Sr., 55, Department for Human Resources, May 15, 1980, 8 years.

GG. W. Kenneth Keown, 36, Department of Education, June 20, 1980, 7 years and 6 months.

HH. Dorothy I. Hoskins, 31, Department for Human Resources, May 15, 1980, 7 years and 4 months.

II. William G. Carver, Jr., 47, Department for Human Resources, May 15, 1980, 7 years.

JJ. Gary W. Wooldridge, 29, Department of Transportation, July 15, 1980, 7 years.

KK. Jack D. Walker, 55, Department for Human Resources, May 15, 1980, 6 years and 11 months.

LL. Charles E. Davis, 29, Department for Human Resources, May 15, 1980, 6 years and 9 months.

MM. Kelly M. Daniels, 67, Department of Transportation, September 19, 1980, 6 years and 4 months.

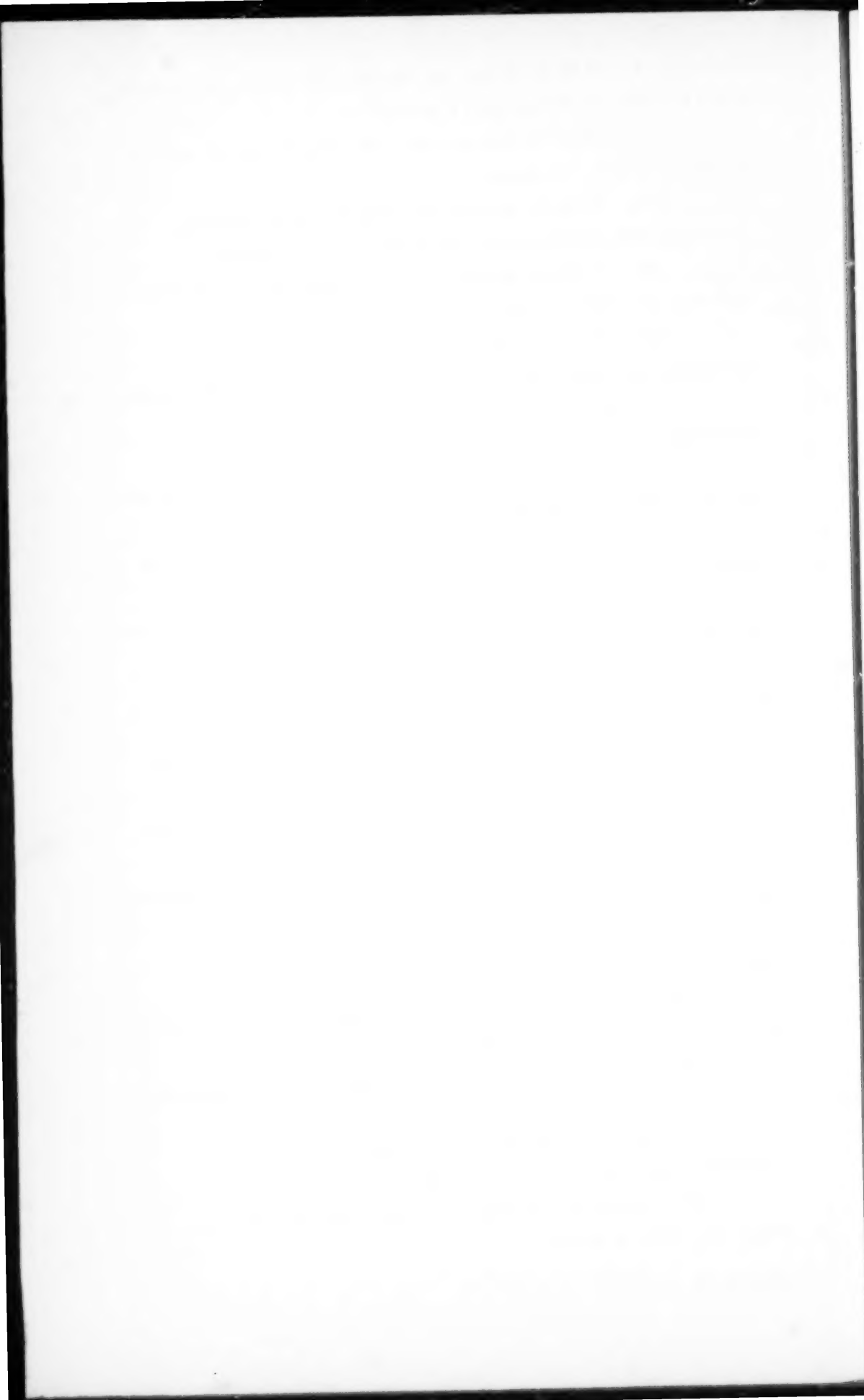
NN. James C. Brown, 45, Department for Human Resources, June 20, 1980, 5 years.

OO. Larry V. Shoemaker, 44, Department of Transportation, April 30, 1980, 5 years.

PP. Albert F. Sperath, 37, Department of the Arts, August 31, 1981, 5 years.

DEFENDANTS

6. Defendant John T. Brown, Jr. who is sued



individually and in his official capacity, is the Governor of the Commonwealth of Kentucky, and in that capacity has the ultimate authority for employment of state personnel.

7. Defendant Dee Haynard, who is sued individually and in her official capacity, is the Commissioner of the Department of Personnel and is Secretary to the Kentucky Personnel Board, Commonwealth of Kentucky, and in that capacity administers and authorizes all employment procedures within state government and the Department of Personnel, makes recommendations to department officials and to the Kentucky Personnel Board regarding decisions affecting Plaintiffs' employment.

8. Defendants Phillip Taliaferro, Libby Walthall, James S. Way, Jack Razor and John W. McNeill who are sued individually and in their official capacities are the Chairman and members of the Kentucky Personnel Board, Commonwealth of Kentucky, and in that capacity have ultimate authority for the lawful and proper implementation and execution of lay-off plans; and determining that such a plan is in the best interest of state government and the citizens of the Commonwealth of Kentucky.

9. Defendant Department or Cabinet Secretaries W. Grady Stumbo, Bruce Lunsford, Frank R. Metts, Jackie Swigart, George L. Atkins, Don Mills, George Wilson, Andrew "Skipper" Martin, George Fischer and Neil Welch, who are sued individually and in their official capacities and in such capacities they exercise(d) authority for employment of department of cabinet personnel.

10. Defendant Department Commissioners John R. Groves, Jr., Robert H. Allphin, Lois Mateus, Williard Stanley, Daniel Briscoe, and Richard H. Lewis, who are sued individually and in their official capacities and in such capacities they exercise(d) authority for employment of department personnel.

11. Defendant Executive Directors Roger Peterman and James A. Nelson, who are sued individually and in their official capacities and in such capacities they exercise(d) authority for employment of agency personnel.

12. Defendant Raymond Barber, who is sued individually and in his official capacity is the Superintendent of Public Instruction and in that capacity has authority for employment of Department of Education personnel.



13. Defendant Joseph R. Bell who is sued individually and in his official capacity is Executive Vice President of the Kentucky Fair and Exposition Center and in that capacity has authority for employment of the Fair and Exposition Center personnel.

14. Defendant Billy G. Wellman who is sued individually and in his official capacity is the Adjutant General of the Department of Military Affairs and in that capacity has authority for employment of department personnel.

15. Defendant Mike Robinson who is sued individually and in his official capacity as the Director of Administrative Control of the Department of Personnel and in that capacity has authority for employment of state personnel.

16. Defendant Department Division Directors Matthew J. Amato, Jr., Rita Young, Ernest P. Fowler, Vert Taylor, Robert E. Blanz and James E. Stewart who are sued individually and in their official capacities and in such capacities they exercise(d) authority for employment of agency personnel.

17. As a result of the reorganization of Kentucky State Government, the names and positions of individual defendants named herein may not be accurate.

CLASS ACTION

18. Plaintiffs bring this action on their own behalf and on behalf of all other persons similarly situated, pursuant to Rule 23 (a) and (b) of the Federal Rules of Civil Procedure.

19. The class which the plaintiffs seek to represent is composed of all merit system employees listed in the official agency and departmental lay-off plans with an effective date extending from January 1, 1980 to the present, and is so numerous that joinder of all members is impractical.

20. There are questions of law and fact which are common to the class and affect the rights of all members of the class. These common questions of law and fact predominate any questions affecting only individual members of the class. A common relief is sought for the members of the class.

21. The claims and defenses of the representative plaintiffs are typical of the claims or defenses of the class; and the representatives of the class will fairly and adequately protect the interests of the other members of the class.

22. The defendants have acted or refused to act on grounds generally applicable to the class; and the prosecution of separate actions by the individual members of the class would create a risk of varying or inconsistent adjudications with respect to individual members of the class or would as a practical matter be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede the ability of other members of the class to protect their interests.

23. Under the aforesaid circumstances the common interests of the class are such that any interest of the individual members of the class is completely outweighed by the desirability of concentrating the controversy in a single forum, and a class action is superior to any other available method for the fair and efficient adjudication of this controversy.

First Cause of Action

24. From January 1980 to the present, Defendants have formulated and implemented plans to lay-off state merit (status) employees, including plaintiffs. Such employees' seniority, service records, performance appraisals, conduct and qualifications were not considered in the formulation and implementation of the official departmental lay-off plans, as required by KRS 18.210 (14) and 101 KAR 1:120 Section 2 (2).

25. Defendants did not attempt to place employees, including plaintiffs, in other positions for which the employees were qualified, which action is required by KRS 18.210(14) and 101 KAR 1:120 Section 2 (3).

26. Defendants have laid-off merit (status) employees, including plaintiffs, while there were provisional, temporary, emergency or probationary employees serving in the same agency in the same class in the same locality retained in employment, which action is specifically prohibited by 101 KAR 1:120 Section 2 (2).

Second Cause of Action

27. Vacancies in the Defendants' agencies were filled from a competitive register before all career employees, including plaintiffs, on the reemployment register for that class were given full consideration for reemployment, as required by KRS 18.217 (3).



Third Cause of Action

28. A cause of action under 42 USC Section 1983 provides redress for deprivation of civil rights under color of state law. KRS 18.210 through KRS 18.360 provide the rules for state employment and establish for state employees, including plaintiffs, tenure and a specific entitlement to employment sufficient to constitute a property right protected by the Fourteenth Amendment. Board of Regents vs. Roth, 408 US 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972). Defendants deprived Plaintiffs of property interest through termination of employment without consideration of seniority, qualifications, performance appraisals, records or conduct, as required by KRS 18.210 (14), which is a violation of the due process clause, Kentucky Revised Statutes and the Kentucky Administrative Regulations.

Fourth Cause of Action

29. Defendants failed to consider Plaintiffs for reemployment before vacancies were filled from the competitive register in deprivation of plaintiffs' property interest in their jobs without due process of law in contravention of the Fourteenth Amendment.

30. Defendants terminated Plaintiffs from state employment in violation of KRS 18.210 (14), and in an arbitrary and capricious manner violative of the equal protection clause of the Fourteenth Amendment the Kentucky Revised Statutes of Kentucky and the Kentucky Administrative Regulations.

Fifth Cause of Action

31. The lay-off plans of the Defendants had a disparate impact on employees over forty years of age. For the information of the Court and the parties, charges have been filed with the United States Equal Employment Opportunity Commission arising out of the Acts complained of herein alleging that Plaintiffs have been discriminated against in employment because of age in violation of 29 USC Section 626 (c). A "right to sue" letter has not as yet been issued.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully demand, on their own behalf and on behalf of all those similarly situated, that this honorable Court:



1. Determine pursuant to Rule 23 of the Federal Rules of Civil Procedure that this action be maintained as a class action;

2. Issue a temporary restraining order, and preliminary and permanent injunctions restraining Defendants from laying off merit (status) employees without due consideration of seniority, service record, performance appraisal, conduct and qualifications; and/or without attempting to place said employees in other positions for which the employees are qualified.

3. Enter preliminary and final relief pursuant to Rules 54, 57, 58 and 65 of the Federal Rules of Civil Procedure declaring that the procedures followed by the Defendants in discharging merit system employees according to the official departmental and state lay-off plans is in violation of KRS 18.210 (14); KRS 18.217; 101 KAR 1:120; 42 USC Section 1983; and the Fourteenth Amendment due process and equal protection clauses;

4. Enter final judgment declaring that the procedures followed by Defendants deprive Plaintiff class members of their Constitutional rights to due process and equal protection in violation of the Fourteenth Amendment;

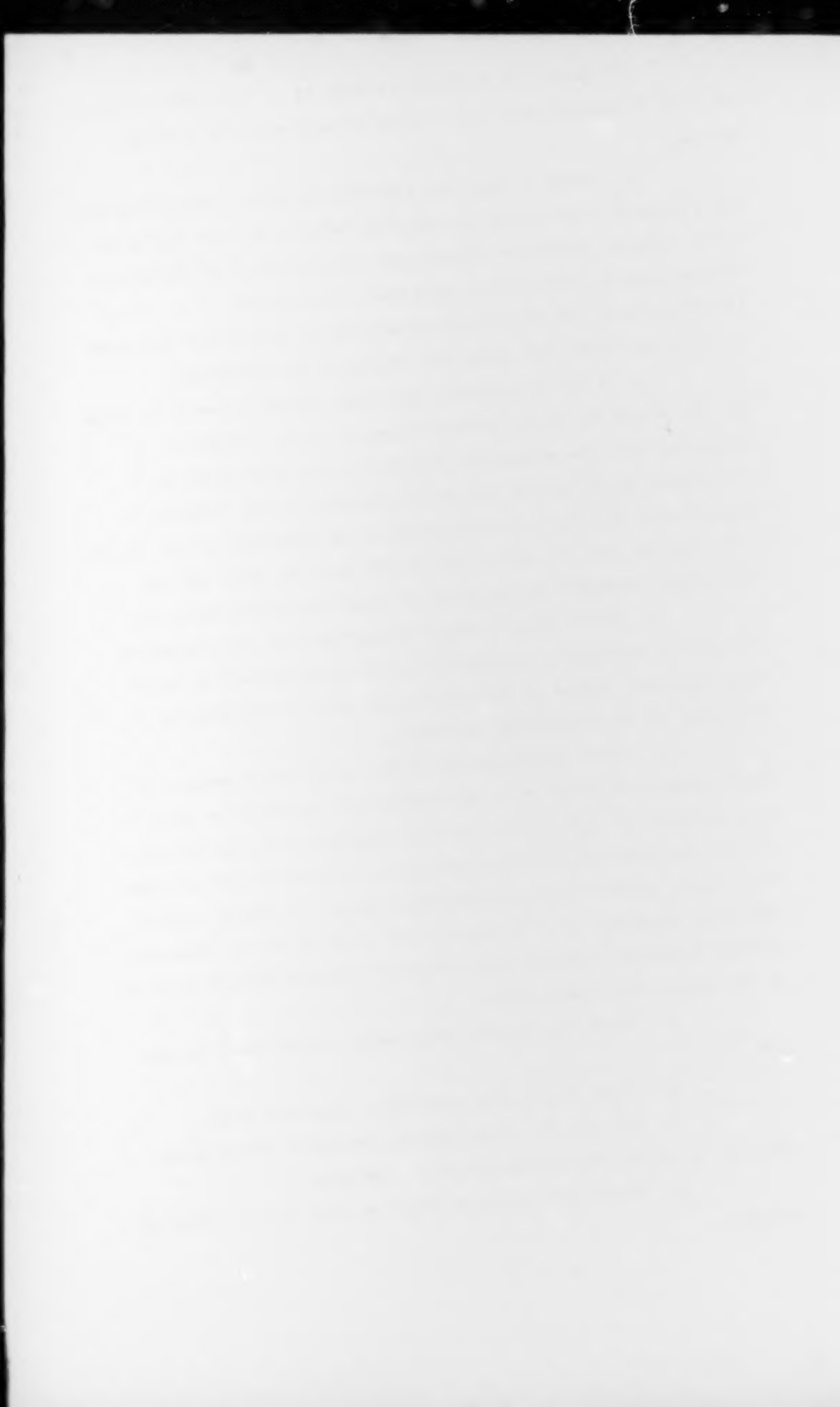
5. Order reinstatement of Plaintiff class members to their former positions prior to termination, demotion or transfer, or a position of like status and pay; together with any and all current and back compensation, seniority, increments and upgrades, sick leave, annual leave, compensatory leave, retirement credit and other benefits as are permitted or provided by the Kentucky Revised Statutes, Kentucky Administrative Regulations and policies of the particular departments.

6. Allow Plaintiffs their costs and expenses herein;
and

7. Allow Plaintiffs reasonable attorneys fees;

8. Any and all other relief, including compensatory damages, to which the Plaintiffs may be entitled.

9. Plaintiffs demand a trial by jury on all issues so triable;



Shelby E. Riggs
SHELBY E. RIGGS

Ann M. Peel
ANN M. PEEL

Glen H. Howell
GLEN H. HOWELL

James M. Huffines, Sr.
JAMES M. HUFFINES, SR.

Paul Cowlin
PAUL COWLIN

W. Kenneth Keown
W. KENNETH KEOWN

Phyllis J. Eggen
PHYLLIS J. EGGEN

Irene Hoskins
IRENE HOSKINS

Lois White
LOIS WHITE

Harriet Jane Jagers
HARRIET JANE JAGGERS

Carl Havens
CARL HAVENS

Charles E. Davis
CHARLES E. DAVIS

Robert M. Damm
ROBERT M. DAMM

Robert L. Poore
ROBERT L. POORE

Elph Murphy
ELPH MURPHY

Paul E. Ball
PAUL E. BALL

Edward S. Spear
EDWARD S. SPEAR

Thomas L. Jashen
THOMAS L. JASHEN

Ruth B. Mayeux
RUTH B. MAYEUX

James M. Fuller, Jr.
JAMES M. FULLER, JR.

Billy F. Furnish
BILLY F. FURNISH

Namorie J. Falsen
NAMORIE J. FALSON

Doris S. Pearman
DORIS S. PEARMAN

Sarah S. Ramonds
SARAH S. RAMONDS

Jack G. Greene
JACK G. GREENE

Marvin Cole
MARVIN COLE

Rita M. McMahon
RITA M. MCMAHON

MARTHA E. BROWN

William C. Carver, Jr.
WILLIAM C. CARVER, JR.

Jack D. Walker
JACK D. WALKER

Patricia Terry
PATRICIA TERRY

James C. Brown
JAMES C. BROWN

Albert F. Sperath
ALBERT F. SPERATH

Larry V. Shoemaker
LARRY V. SHOEMAKER

Davis L. Jackson, Sr.
DAVIS L. JACKSON, SR.

Earl B. Howard
EARL B. HOWARD

Gary W. Goldridge
GARY W. GOLDRIDGE

Lloyd N. Ryles
LLOYD N. RYLES

Catherine A. Hayden
CATHERINE A. HAYDEN

John J. Thomas
JOHN J. THOMAS

Mary H. Peter
MARY H. PETER

G. L. Jackson
G. L. JACKSON

PLAINTIFFS

Subscribed, sworn to and acknowledged before me by the
Plaintiffs herein, this 25th day of August, 1981.

My commission expires: March 7, 1982.

Reuben M. Biley
NOTARY PUBLIC
KENTUCKY, STATE AT LARGE